In the

United States Court of Appeals

For the Seventh Circuit

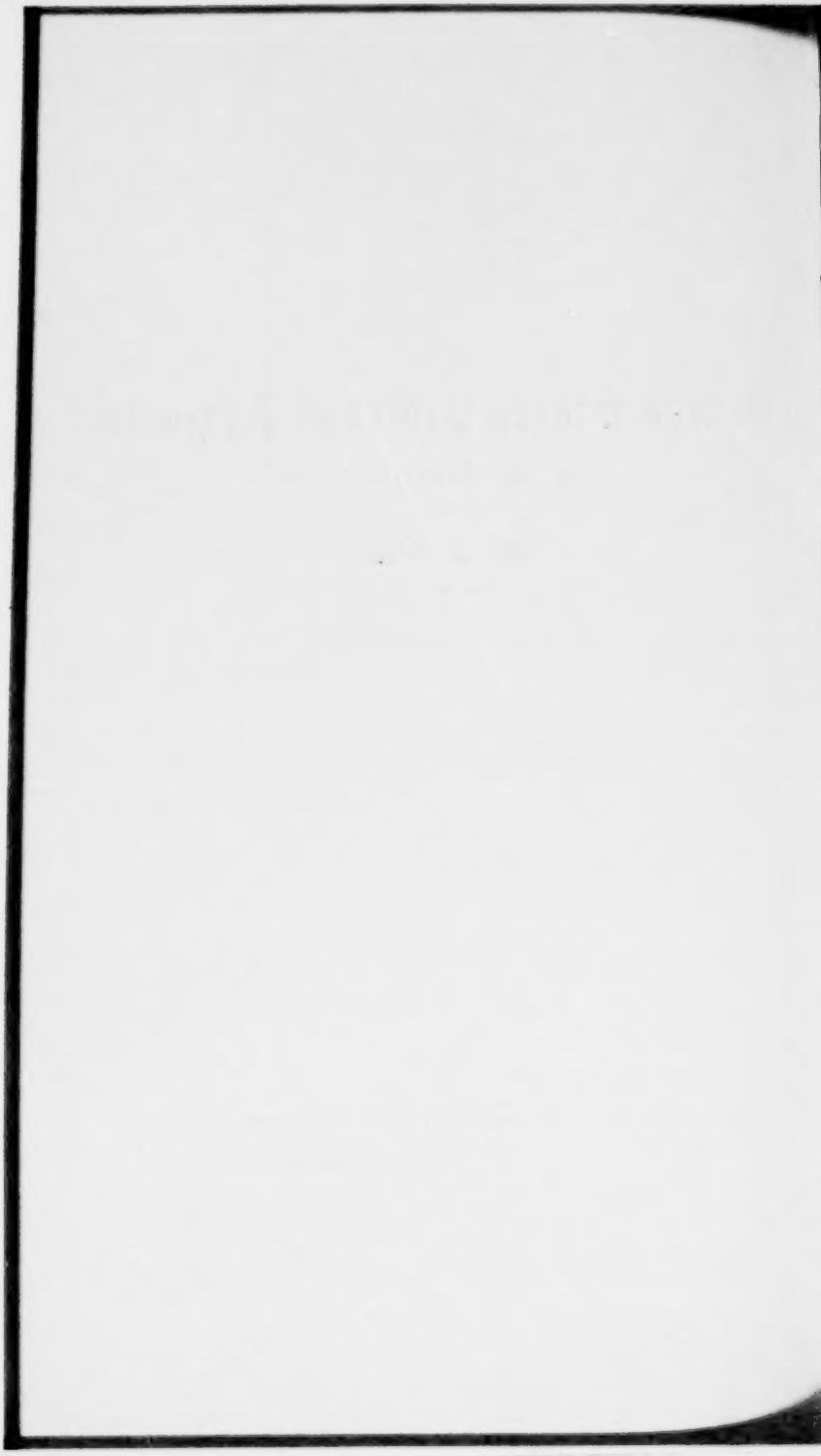
No. 10936

MARTIN P. DURKIN, SECRETARY OF LABOR,
Plaintiff-Appellee,

vs.

JOYCE AGENCY, INC.
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.



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INDEX.

Placita 1
Statement pursuant to Rule 10(b) 2
Complaint, filed Oct. 13, 1949 3
Answer of Joyce Agency, Inc., filed Dec. 8, 1949 9
Notice and Motion for Substitution of Party Plaintiff 11
Order of Substitution of Maurice J. Tobin as Party Plaintiff, entered June 12, 1950 13
Stipulation of Facts, filed Nov. 13, 1951 14
Notice of Motion for Leave to File Defendant's Brief Instanter, and to set Case for Hearing, etc. 59
Order That Leave Be Granted to File Defendant's Brief Instanter, and Setting Case for Hearing 60

TRANSCRIPT OF PROCEEDINGS.

Statement of Stanford Clinton 61

Witnesses for Defendant.

Testimony of:
Main, Marcella 61
Poehler, Bern 79
Amended Answer of Joyce Agency, Inc., filed April 14, 1952 88
Stipulation of Facts Regarding Sales in Retail Stores of Goldblatt Bros., Inc., filed April 25, 1952 91
Memorandum of the Court, filed March 19, 1953 92
Order of Substitution of Martin P. Durkin as Party Plaintiff, entered April 24, 1953 99
Findings of Fact and Conclusions of Law, filed May 7, 1953 101
Judgment, entered May 7, 1953 119
Notice of Appeal, filed July 1, 1953 120
Bond for Costs on Appeal, filed July 1, 1953 121
Clerk's Certificate 124

BLEED THROUGH POOR COPY

Proceedings in the U. S. C. A. for the Seventh Circuit
Caption 125
Opinion, Schnackenberg, J 125
Judgment 134
Order denying petition for rehearing 135
Clerk's certificate 135
Designation as to the printing of the record (omitted in printing) 135a
Order granting certiorari 137

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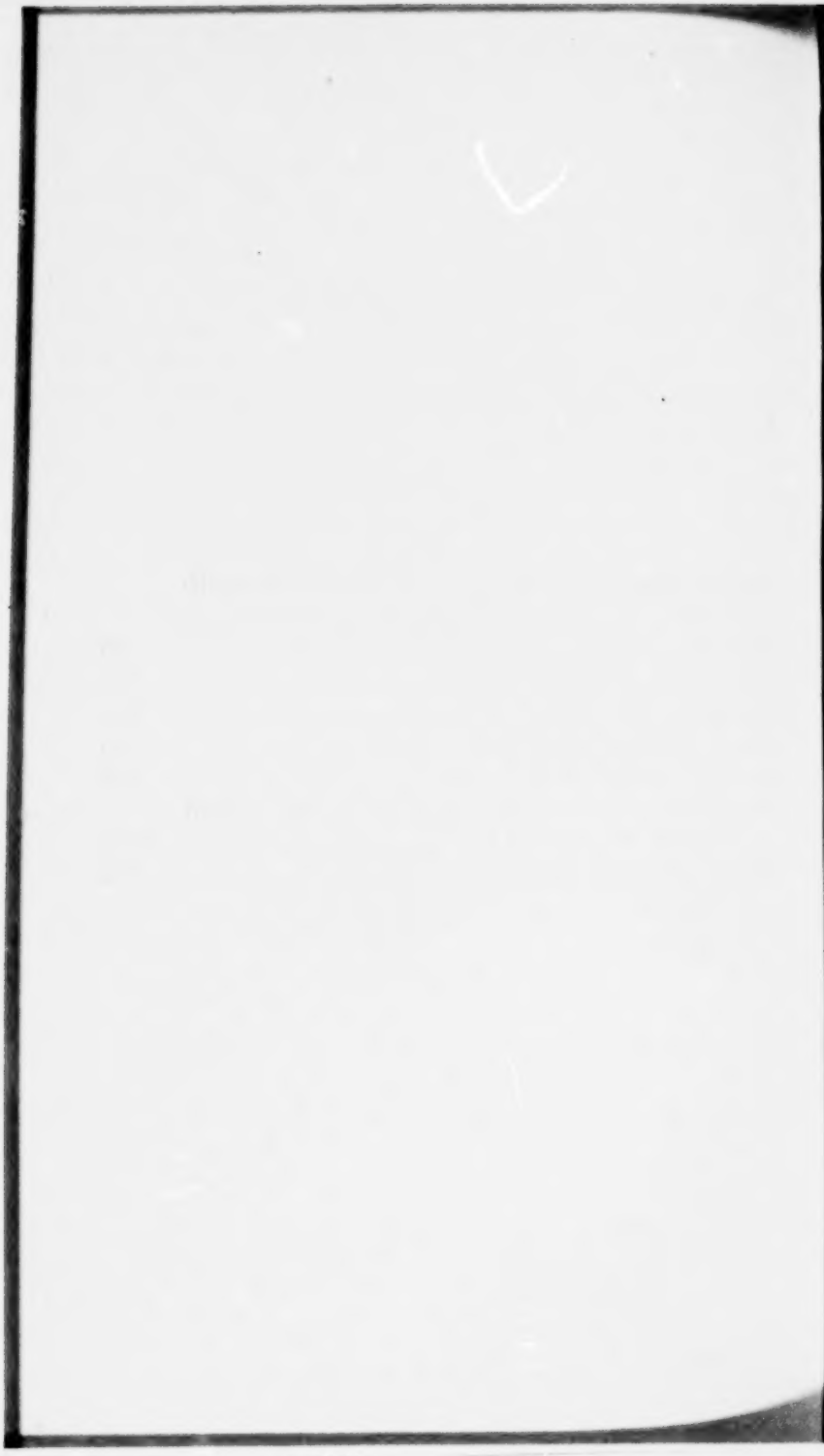

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1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of May (it being the 4th day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-Three and of the Independence of the United States of America, the 177th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable William H. Holly, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. La Buy, District Judge.
Honorable J. Sam Perry, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Thursday, May 7, 1953.

Court met pursuant to adjournment.

Present: Honorable J. Sam Perry, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

Martin P. Durkin, Secretary of Labor, *Plaintiff-Appellee,* *vs.* Joyce Agency, Inc., a corporation, *Defendant-Appellant.*	Civil Action No. 49 C 1558.

STATEMENT IN ACCORDANCE WITH RULE 10(b) OF THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

1. The time of the commencement of the suit: October 13, 1949.

2. The original parties were: William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, Plaintiff, *vs.* Joyce Agency, Inc., a corporation, Defendant.

By order of Court of June 12, 1950, Maurice J. Tobin, Secretary of Labor, was substituted as plaintiff in the place of William R. McComb.

By order of Court of February 24, 1953, Martin P. Durkin, Secretary of Labor, was substituted as plaintiff in the place of Maurice J. Tobin.

3. The complaint was filed on October 13, 1949; the answer was filed on December 8, 1949; and the amended answer was filed on April 14, 195.

4. The trial was held on April 11, 1952, before Judge J. Sam Perry.

3 5. Final judgment was entered on May 7, 1953, and notice of appeal was filed on July 1, 1953.

Stanford Clinton,
Attorney for Defendant-Appellant,
134 North LaSalle Street,
Chicago 2, Illinois.
Robert A. Sprecher,
Attorney for Defendant-Appellant,
100 West Monroe Street,
Chicago 3, Illinois.

Endorsed: In the United States District Court * * (Caption—49-C-1558) * * Statement in accordance

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with rule 10(b) of the rules of the United States Court of Appeals for the Seventh Circuit Stanford Clinton 134 N. LaSalle Street DE 20525 Robert A. Sprecher 100 W. Monroe Street RA 6-2632

5 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

Be It Remembered, that on to wit, the 13th day of October, 1949, the above-entitled action was commenced by the filing of the following Complaint in the Clerk's Office of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to wit:

6 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

COMPLAINT.

I.

Plaintiff brings this action to enjoin defendant from violating the provisions of Section 15(a)(2) of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060; U.S.C. Title 29, Sec. 201 et seq.) hereinafter called the Act.

II.

Jurisdiction of this action is conferred upon the court by Section 17 of the Act.

III.

Defendant is, and at all times hereinafter mentioned was, a corporation organized and existing by virtue of the laws of the State of Illinois, having its office and place of business at 343 South Dearborn Street, in the City of Chi-
7 cago, State of Illinois, within the jurisdiction of this Court. The defendant has been engaged in, and is engaged in, furnishing watchmen and detectives for Goldblatt Bros., Inc. and Martin Food Products, Inc., a subsidiary of Goldblatt Bros., Inc.

IV.

At all times hereinafter mentioned, Goldblatt Bros., Inc., has been and is maintaining and operating a warehouse and garage at 3161 South Ashland Avenue, Chicago, Illinois, where it is engaged in the receipt, unloading, uncrating, handling, storing, assembling, repairing, finishing, polishing, and producing furniture. Within the same building, it also maintains and operates a large garage which houses numerous trucks, trailers, and tractors used by Goldblatt Bros., Inc. for hauling, delivering, and transporting of goods in interstate and intrastate commerce.

At all times hereinafter mentioned, defendant employed and is employing approximately 10 employees at the aforesaid warehouse and garage at 3161 South Ashland Avenue, Chicago, Illinois, in interstate commerce, in the production of goods for interstate commerce, and in processes or occupations necessary to such production, viz: patroling, watching, guarding, protecting from fire, trespass, and other hazard, the equipment, physical structure, and goods and properties therein contained; checking in and out trucks, trailers, tractors, and railroad freight cars; placing seals on loaded trucks and trailers, and maintaining records of the said seals and movement of the trucks, trailers, and tractors. A substantial portion of said goods is received from states other than the State of Illinois, and a substantial portion of the goods produced by these employees
8 has been, and is being, produced for interstate commerce and has been, and is being, shipped, delivered, transported, offered for transportation and sold in interstate commerce, from said place of business to other states.

V.

At all times hereinafter mentioned, Goldblatt Bros., Inc. has been and is maintaining and operating a grocery warehouse at 201 East 63rd Street, Chicago, Illinois, where it is engaged in the receipt, unloading, handling, storing, packaging, packing, and producing of foods, groceries, liquors, candies, and cookies.

At all times hereinafter mentioned, defendant employed and is employing approximately 5 employees at the aforesaid warehouse at 201 East 63d Street, Chicago, Illinois, in interstate commerce, in the production of goods for interstate commerce, and in processes or occupations neces-

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sary to such production, viz: patroling, watching, guarding, protecting from fire, trespass, and other hazard, the equipment, physical structure, and goods and properties therein contained; checking in and out trucks, trailers, and tractors; placing seals on loaded trucks and trailers; maintaining records of the said seals and movement of the trucks, trailers, and tractors; and maintaining the water in the boiler at the heating plant at proper levels. A substantial portion of said goods is received from states other than the State of Illinois, and a substantial portion of the goods produced by these employees has been, and is being, produced for interstate commerce and has been, and is being, shipped, delivered, transported, offered for transportation, and sold in interstate commerce from said place of business to other states.

VI.

9 At all times hereinafter mentioned, Goldblatt Bros., Inc. has been and is maintaining and operating a general merchandise warehouse at 3913 South Wentworth Avenue, Chicago, Illinois, where it is engaged in the receipt, handling, unpacking, storing, assembling, repacking, and distributing general merchandise.

At all times hereinafter mentioned, defendant employed and is employing approximately 8 employees at the aforesaid warehouse at 3913 South Wentworth Avenue, Chicago, Illinois, in interstate commerce, in the production of goods for interstate commerce, and in processes or occupations necessary to such production, viz.: patroling, watching, guarding, protecting from fire, trespass, and other hazards, the equipment, physical structure, and goods and properties therein contained; checking in and out trucks, trailers, and tractors; placing seals on loaded trucks and trailers, and maintaining records of the said seals and movement of the trucks, trailers, and tractors. A substantial portion of said goods is received from states other than the State of Illinois, and a substantial portion of the goods produced by these employees has been, and is being, produced for interstate commerce and has been, and is being, shipped, delivered, transported, offered for transportation, and sold in interstate commerce from said place of business to other states.

VII.

At all times hereinafter mentioned, Goldblatt Bros., Inc. has been and is maintaining and operating a warehouse on Wabash Avenue between Jackson Boulevard and Van Buren Street, where goods are manufactured and produced, a substantial part of which goods is produced for and regularly shipped in interstate commerce.

At all times hereinafter mentioned, defendant employed and is employing approximately 2 employees in the production of goods for interstate commerce, and in processes or occupations necessary to such production, viz.: patroling, watching, guarding, protecting from fire, trespass, and other hazard, the equipment, physical structure, and goods and properties therein produced and contained. A substantial portion of the goods produced by these employees has been, and is being, produced for interstate commerce and has been, and is being, shipped, delivered, transported, offered for transportation, and sold in interstate commerce from said place of business to other states.

VIII.

At all times hereinafter mentioned, Goldblatt Bros., Inc. operated and are operating a bakery and food-processing establishment at 2608 West Lexington Street, Chicago, Illinois, where bakery goods and cooked foods, such as fowl, fish, ham, and other meats are manufactured and produced.

At all times hereinafter mentioned, defendant employed and is employing approximately 3 employees at the bakery and food-processing establishment at 2608 West Lexington Street, Chicago, Illinois, in interstate commerce, in the production of goods for interstate commerce, and in processes or occupations necessary to such production, viz.: patroling, watching, guarding, protecting from fire, trespass, and other hazard, the equipment, physical structure, the goods and properties therein contained, and in checking in and out both persons and property. A substantial portion of the raw materials received for such production is received from states other than the State of Illinois. A substantial portion of the goods produced by these employees has been, and is being, produced for interstate commerce and has been, and is being, shipped, delivered, transported, offered for transportation, and sold in

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interstate commerce from said place of business to other states.

IX.

At all times hereinafter mentioned, Martin Food Products, Inc. maintain and has maintained a food manufacturing establishment at 3641 South Iron Street, Chicago, Illinois, where it is engaged in the production and manufacture of jams, jellies, peanut butter, and like goods.

The defendant has employed approximately 3 employees in said establishment of Martin Food Products, Inc. at 3641 South Iron Street, Chicago, Illinois, in interstate commerce, in the production of goods for interstate commerce, and in processes or occupations necessary to such production, viz.: patroling, watching, guarding, protecting from fire, trespass, and other hazard, the equipment, physical structure, the goods and properties therein contained, and in checking in and out both persons and property. A substantial portion of the raw materials received for such production is received from states other than the State of Illinois. A substantial portion of the goods produced by these employees has been, and is being, produced for interstate commerce and has been, and is being, shipped, delivered, transported, offered for transportation, and sold in interstate commerce from said place of business to other states.

12

X.

At all times hereinafter mentioned, defendant employed and is employing approximately 6 employees in and about its office and place of business in Chicago, Illinois, in interstate commerce, in the production of goods for interstate commerce, and in processes or occupations necessary to such production, viz.: in providing its customers with watchmen and detectives, in assigning and directing its employees enumerated in the foregoing paragraphs, and in keeping books, records, and payrolls, and in performing the clerical work incidental to and a part of the operations of its business and the work of its employees. A substantial portion of the goods produced by these employees has been, and is being, produced for interstate commerce and has been, and is being, shipped, delivered, transported, offered for transportation, and sold in interstate commerce from the aforesaid places of business to other states.

XI.

Defendant repeatedly has violated and is violating the provisions of Sections 7 and 15(a)(2) of the Act by employing its employees in interstate commerce and in the production of goods for interstate commerce, as aforesaid, for workweeks longer than 40 hours, since October 1, 1947, without compensating the employees for their employment in excess of 40 hours, in workweeks during such period, at rates not less than one and one-half times the regular rate at which they were employed.

13 XII.

Defendant has, since October 1, 1947, repeatedly violated the aforesaid provisions of the Act. A judgment enjoining and restraining the violations hereinabove alleged is specifically authorized by Section 17 of the Act.

Wherefore, cause having been shown, plaintiff demands judgment permanently enjoining and restraining defendant, its officers, agents, servants, employees, and attorneys, and all persons acting or claiming to act in its behalf and interest, from violating the provisions of Section 15(a)(2) of the Act, and directing that said defendant make reparation to its employees in the amounts due to them by reason of the violations of the Act set forth herein, and such other and further relief as may be necessary and appropriate.

William S. Tyson,
Solicitor,
Herman Grant,
Regional Attorney,
Richard W. Proctor,
Attorney,
Attorneys for Plaintiff United States Department of Labor.

P. O. Address
United States Department of Labor
Wage and Hour Division
1200 Merchandise Mart
Merchandise Mart Plaza
Chicago 54, Illinois

• • • • •

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18 And afterwards on, to wit, the 8th day of December, 1949 came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Answer in words and figures following, to wit:

19 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-1558) * *

ANSWER OF JOYCE AGENCY, INC.

1. Defendant admits the allegations contained in Paragraphs I and II.

2. Defendant admits the allegations of Paragraph III except that it denies that it presently does or for some time past has furnished watchmen and detectives for Martin Food Products, Inc.

3. Defendant admits the allegations contained in Paragraph IV except that it denies that any of said employees is engaged in interstate commerce and except that it states that the amount of production of goods for interstate commerce which occurs within said premises is insignificant and negligible and occurs within a retail establishment or is performed by employees engaged in a local retailing capacity as that term is defined and delimited by the Administrator.

Defendant further denies that any substantial quantity of goods produced by any employee in said premises has been and is being shipped, delivered, transported, offered for transportation and sold in interstate commerce from said place of business to other states.

20 4. Defendant admits the allegations of Paragraph V except that it denies that it is engaged in producing any foods, groceries, liquors, candies and cookies at said warehouse, and except that it denies that any employees in said building are engaged in the production of goods for interstate commerce or in processes or occupations necessary to such production, or that any goods produced by its employees on said premises is being shipped, delivered, transported, offered for transportation and sold in interstate commerce.

5. Defendant admits the allegations of Paragraph VI except that it denies that any employees employed at said warehouse are engaged in the production of goods for inter-

state commerce or processes or occupations necessary to such production, or that any goods produced by its employees on said premises is being shipped, delivered, transported, offered for transportation and sold in interstate commerce.

6. Defendant admits the allegations contained in Paragraph VII of the Complaint but states that the goods produced by defendant's employees in said premises is infinitesimal.

7. Defendant admits the allegations of Paragraph VIII except that it denies that it cooks food such as fowl, fish, ham and other meats within said premises.

Defendant further alleges that all of its employees working within said premises are now and for a long period prior to the filing of this Complaint were employed in conformity with the labor standards of the Act.

8. Defendant admits the allegations contained in Paragraph IX. Defendant further alleges that it presently
21 has no employees at Martin Food Products, Inc. and has not had any employees at said premises for a long time prior to the filing of the Complaint.

9. Defendant admits the allegations of Paragraph X except that it denies that any of its employees at its office are engaged in the production of goods for interstate commerce and in processes or occupations necessary to such production, or that any goods produced by its employees on said premises is being shipped, delivered, transported, offered for transportation and sold in interstate commerce.

10. Defendant denies the allegations of Paragraph XI except that it admits that in an inconsequential number of instances the defendant violated the provisions of Sections 7 and 15(a)(2) of the Act and alleges that said violations have long since ceased.

11. Defendant further alleges that its previous violations of the Act were committed under a misapprehension and misconstruction of the applicable law; that upon being advised by the representatives of the Wage and Hour Division of the existence of violations, it promptly ceased and desisted said violations.

Defendant further alleges that it has every intention in utmost good faith to hereafter comply with the labor standards imposed by the Act and that it is utterly unnecessary for the injunctive power of this Court to be invoked.

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Wherefore, defendant respectfully prays that this proceeding be dismissed.

Joyce Agency, Inc.
By Edwin G. Boltz, Sr.

Stanford Clinton and Jay A. Pritzker,
Post Office Address:
134 North LaSalle Street,
Chicago 2, Illinois.

22 State of Illinois, } ss.
County of Cook, }

Edwin G. Boltz, Sr., being first duly sworn deposes and says that he is the President of Joyce Agency, Inc. and that he is duly authorized by the defendant, Joyce Agency, Inc., in this behalf; that he has knowledge of the facts and that the foregoing Answer by him subscribed on behalf of Joyce Agency, Inc. is true.

Edwin G. Boltz, Sr.

Subscribed and sworn to before me this 7th day of December, A. D. 1949.

Honora Harris,
(Seal) *Notary Public.*

* * * * *

27 And afterwards on, to wit, the 12th day of June, 1950, came the Plaintiff by his attorneys and filed in the Clerk's office of said Court his certain Notice And Motion in words and figures following, to wit:

28 In the United States District Court.
* * (Caption—49-C-1558) * *

NOTICE.

To: Pritzker, Pritzker & Clinton,
134 North LaSalle Street,
Chicago 2, Illinois.

You will please take notice that on Friday, June 9, 1950, at the opening of court in the forenoon or as soon thereafter as counsel can be heard, we shall appear before the Hon. William J. Campbell, Judge of the United States District Court, in Room 757, United States Court House, at Chicago, Illinois, or before such other judge as may be sitting in his place and stead, and then and there move that

Maurice J. Tobin, Secretary of Labor of the United States, be substituted as party plaintiff and this cause continued in his name.

At which time and place you may appear if you see fit.

Dated: June 7, 1950.

William S. Tyson,
Solicitor,
Herman Grant,
Regional Attorney,
Richard W. Proctor,
Attorney,
Attorneys for Plaintiff.

29 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-1558) * *

MOTION.

To: The Honorable William J. Campbell,
Judge of the United States District Court.

Now come the attorneys for plaintiff and suggest that Maurice J. Tobin is the duly appointed, qualified and acting Secretary of Labor of the United States. Under the provisions of Reorganization Plan No. 6, dated March 13, 1950, effective May 24, 1950, issued under the Reorganization Act of 1949, tit. 5 U.S.C., sect. 133z et seq., the function of the Administrator of the Wage and Hour Division, United States Department of Labor, in conducting this litigation has been transferred to the Secretary of Labor. There is a substantial need for the continuing of this action.

Plaintiff moves that Maurice J. Tobin, Secretary of Labor of the United States, be substituted in lieu and instead of William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, as
30 party plaintiff herein, and that this cause be continued in the name of Maurice J. Tobin, Secretary of Labor of the United States, Plaintiff.

Respectfully submitted this 7th day of June, A. D. 1950.

William S. Tyson,
Solicitor,
Herman Grant,
Regional Attorney,
Richard W. Proctor,
Attorney,
Attorneys for Plaintiff.

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31 State of Illinois, } ss:
County of Cook, }

AFFIDAVIT.

Phyllis M. Fitzgerald, being first duly sworn, on oath deposes and says that she is employed by the Office of the Solicitor, United States Department of Labor, and that she mailed the copies of the foregoing Notice, Motion referred to therein and the proposed Order to:

Pritzker, Pritzker & Clinton,
134 North LaSalle Street,
Chicago 2, Illinois,

by depositing said copies in the United States Post Office located in the Merchandise Mart, Chicago, Illinois, before 5:00 p. m. on the 7th day of June, A. D., 1950, in an envelope addressed as above set forth and bearing official notice of the Office of the Solicitor, United States Department of Labor.

Phyllis M. Fitzgerald.

Subscribed and sworn to before me this 7th day of June A. D., 1950.

Bertha K. Hoffmann,
(Seal) *Notary Public.*

32 And on the same day, to wit, on the 12th day of June, 1950, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable William J. Campbell, District Judge, appears the following entry, to wit:

33 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

ORDER.

This cause coming on to be heard upon the Motion of the plaintiff herein to substitute Maurice J. Tobin, Secretary of Labor of the United States as party plaintiff; it appearing to the court that there is substantial need for continuing this action:

It is Ordered, Adjudged, and Decreed that Maurice J. Tobin, Secretary of Labor of the United States, be and he is hereby substituted in lieu and instead of William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, as party plaintiff herein; and

It is Further Ordered that this action be continued in the name of Maurice J. Tobin, Secretary of Labor of the United States, Plaintiff, all without prejudice to the proceedings already had in this action.

Dated June 12, 1950.

Campbell,
United States District Judge.

* * * * *

36 And afterwards on, to wit, the 13th day of November, 1951, came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation of Facts, And Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14-A, 14-B, 14-C, 14-D, 14-E, 14-F, 14-G, 14-H, and 15 in words and figures following, to wit:

(The originals of the Stipulation of Facts and Exhibits are incorporated herein by direction of this Court, and transmitted separately for convenience):

37 IN THE UNITED STATES DISTRICT COURT

* * (Caption—49-C-1558) * *

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto, as follows:

1.

Defendant, Joyce Agency, Inc., is, and at all times hereinafter mentioned was, a corporation organized under and existing by virtue of the laws of the State of Illinois, and maintains its central office and place of business at 343 South Dearborn Street, Chicago, Illinois.

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2.

The defendant has been, and is, engaged in the business of furnishing watchman, guard, detective, fire inspection, and shopping service to Goldblatt Bros., Inc. Defendant employs 72 employees in its business.

3.

Goldblatt Bros., Inc., hereinafter called "Goldblatt,"
38 an Illinois corporation, owns and operates a chain of 14 retail department stores. Of these stores, 10 are in the city of Chicago and one in each of the cities of Joliet, Illinois; Hammond, Gary, and South Bend, Indiana. It has a central office in Chicago, Illinois, where the administrative work in connection with Goldblatt's organization is performed, including the purchase of various kinds of merchandise usually found in a large department store. To service its 14 department stores, Goldblatt maintains in Chicago, Illinois, warehouses at 3913 Wentworth Avenue, 3161 South Ashland Avenue, 201 East 63rd Street, and 328 South Wabash Avenue, and a bakery at 2608 West Lexington Street.

The total sales volume of all Goldblatt's stores for the fiscal years ending January 31, 1950 and January 31, 1951 was $90,120,214 and $94,957,514, respectively. Of these amounts, $17,369,674 for the fiscal year 1950, and $18,913,500 for the fiscal year 1951, represent sales by Goldblatt's stores in Hammond, Gary, and South Bend, Indiana.

4.

Wentworth Warehouse.

a. Goldblatt maintains a warehouse at 3913 South Wentworth Avenue, Chicago, Illinois, hereinafter called the "Wentworth Warehouse." This warehouse is bounded by Wentworth Avenue on the west, LaSalle Street on the east, 39th Street on the north, and the railroad tracks, about 40th Street, on the south. It contains 350,000 square feet of floor space and consists of three interconnected buildings. One building is a 7-story building facing LaSalle Street, bounded on the north by 39th Street, and on the south by the railroad tracks. The second is a 3-
39 story building facing on Wentworth Avenue extending back to the 7-story building. The third is a long 1-story building facing Wentworth Avenue, extending from

the south wall of the 3-story building to the railroad tracks, and west from Wentworth Avenue to the 7-story building. Blueprints of the first and second floors of the Wentworth Warehouse are attached hereto, marked Exhibits 1 and 2, incorporated herein, and made a part hereof.

b. On the first floor level of the 7-story building and facing LaSalle Street is a receiving platform approximately 370 feet long where goods brought into the Wentworth Warehouse by truck and trailer are received. This platform has 22 receiving doors, through 9 of which goods are brought into the warehouse. Opening onto the receiving platform at appropriate intervals are six freight elevators which are used in transporting goods from the receiving platform to the various stock departments in the Wentworth Warehouse. On the second floor level of the 7-story building, and facing LaSalle Street, is an elevated railroad siding running the full length of the building inside of the east wall. From railroad freight cars on this railroad siding incoming goods are received and unloaded directly into three freight elevators. These freight elevators are used in transporting goods to various parts of the warehouse. In the basement of the 7-story building is located the engine room. The engine room contains the heating equipment, boiler, and pumps for the fire control pressure sprinkler system. The engine room furnishes the heat and pressure for the three buildings composing the Wentworth Warehouse. The warehouse is equipped throughout with a pressure sprinkler system.

c. The 3-story building is known as the Administration building. Goldblatt's offices for the administration of the Wentworth Warehouse are located on the first floor. The entrance to the Administration building, at 3913 Wentworth Avenue, serves also as the entrance or "front door" to the Wentworth Warehouse for all persons employed in the said warehouse and for all visitors to the warehouse. All mail is received or dispatched through this "front door." This "front door" is equipped with a time lock. The lock contains a tape upon which a record is made each time the door is unlocked. The tape is used as a check, by defendant's day front door guard and house detective, on all entries or departures made at the Wentworth Warehouse outside of business hours. Two freight elevators located in the west wall of the 7-story building open into both the 7-story building and the 3-story Administration building. Merchandise is warehoused on all floors and basement of the Administration building.

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d. The 1-story building facing Wentworth Avenue is the shipping department of the Wentworth Warehouse. The wall of this building facing on Wentworth Avenue has 12 steel doors. These doors permit the ingress and egress of trucks and trailers. Within the building is a loading and shipping platform approximately 250 feet long and 80 feet deep. A portion of the platform is divided into narrow alleys designated "store runs"; each Goldblatt department store is assigned a "store run" where goods are assembled for shipment and where goods remain pending
41 loading and transportation to said Goldblatt department store. This platform is set back far enough from the entrance so that trucks and trailers can be backed up against the platform and be completely within the building. The bed of the trailer is normally the same level as the loading dock. The platform has the capacity for and does actually handle 20 trucks and trailers simultaneously.

5.

a. Approximately 70 per cent of the goods received at the Wentworth Warehouse is regularly and daily received in interstate commerce from points outside of the State of Illinois. Merchandise having a sales value of over 30 million dollars was received at this warehouse during each of the fiscal years ending January 31, 1950 and 1951. Approximately 20 per cent of the merchandise shipped from the Wentworth Warehouse is shipped to Goldblatt's stores in Hammond, Gary, and South Bend, Indiana, and approximately 80 per cent to its stores in Illinois. During each of the fiscal years ending January 31, 1950 and 1951, merchandise having a sales value of over 30 million dollars was shipped to Goldblatt stores from this Wentworth Warehouse.

b. The goods handled at this warehouse are the "soft lines" and items of small bulk, including such merchandise as textiles, wearing apparel, furs, jewelry, small appliances, cameras and photographic equipment, sporting goods, chinaware and glassware, cigarettes and tobaccos, automobile supplies and tires, toys, lamps, pictures, mirrors, stationery, paper products, typewriters, bedding, shoes, rubbers, and drugs.

42 c. Goldblatt employs approximately 150 persons at the Wentworth Warehouse in the receiving, unloading, checking, unpacking, storing, handling, assembling, re-

packing, transporting to "store runs," distributing, and shipping of merchandise to Goldblatt's department stores.

6.

At the receiving platform and railroad siding of the Wentworth Warehouse, described in paragraph 4(b) hereof, Goldblatt employees daily receive, unload, and check incoming goods, 70 per cent of which goods is received in interstate commerce from points without the State of Illinois. The receiving department employees deposit these goods on the receiving platform and on freight elevators adjacent to and opening onto the railroad siding. Shipments from 50 to 60 trucks and trailers are daily received and unloaded at the receiving platform. An average of four freight cars are received each week on the railroad siding and goods therefrom unloaded onto the freight elevators. Goldblatt's receiving clerk makes up the upper half of the "receival" or "receiving memo", a copy of which is attached hereto, marked Exhibit 3, incorporated herein, and made a part hereof. After unloading, the "break-bulk" shipments are taken directly to the shipping platform by receiving department employees for immediate forwarding to a particular Goldblatt store; "break-bulk" shipments are composed of incoming goods which are designated on the common carrier freight bills for particular Goldblatt stores. A blanket receival is made up for "break-bulk" shipments for purposes of transmission through the warehouse. This blanket receival is immediately voided and interstore transfers made up by the receiving clerk for each of the stores for which the goods are designated. "Break-bulk" shipments are received daily. A "receival" for these goods is made up by the receiving clerk at the particular Goldblatt store when the goods are received
43 at that store. All other goods, after being unloaded, are moved to the various stock departments located in the basements and on all floors of the 3-story and 7-story buildings. In each stock department the goods are unpacked, counted, checked, marked, and placed in stock. Here the lower half of the "receival" is completed. Orders for all Goldblatt stores are filled from said stock departments.

7.

a. The normal procedure followed at the Wentworth Warehouse by Goldblatt employees in filling orders from

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stock is as follows: Merchandise is picked from stock as required by the particular Goldblatt store order and placed in a bin. This order is then checked and packed in a container, such as a box, carton, case, basket, or hamper, or the order is placed on a rack. The order is then placed upon a skid, often with other orders, and taken to the door of the freight elevator. The Goldblatt freight elevator operator transports the orders to the first floor. Here the orders are sorted and checked by store. Then the orders for each store are taken to the "store run" located on the shipping platform, described in paragraph 4(d) hereof. Goods are loaded from the "store run" onto Goldblatt's trucks and trailers. An average of 75 Goldblatt trailers are loaded weekly at the shipping platform, and of this number approximately 15 trailers a week go to Goldblatt's Indiana department stores. Throughout the day as goods are loaded, they are replaced in the store runs by other goods. A trip sheet is made up for each load; a copy of said trip sheet is attached hereto, marked Exhibit 4, incorporated herein, and
44 made a part hereof. Thereafter the goods are daily transported to Goldblatt's stores, including the stores in Hammond, Gary, and South Bend, Indiana. Orders not completely picked or packed by quitting time are left in that incompleted state in their respective stock departments until the next working day. Similarly, assembled goods are left in the store runs until the next working day. Trucks or trailers which are loaded and sealed, partially loaded, or empty also remain in the warehouse until the next working day.

b. The procedure followed by Goldblatt employees in filling orders in the tobacco department (located in the north room of the basement of the 7-story building) varies from that described in paragraph 7(a) hereof. The tobacco department is kept under lock and key during nonworking hours. All orders for cigarettes, tobacco, and smoking accessories for Goldblatt stores are filled from this room. The procedure followed in preparing an order for cigarettes is as follows: Cases of cigarettes are opened and the cartons are removed. The cartons are then placed in a machine used for stamping each package with Illinois or Indiana State tax stamps. The machine slits open the carton, prints the State tax stamp on the end of each cigarette package, and reseals the carton. The cartons are then repacked into the case. Copies of the orders from the particular retail store are then attached to the cases. The cases are then

placed in an elevator and taken directly to the first floor. Thereafter the cigarettes are handled as "valuable goods" in the manner described in paragraph 7(c) hereof.

c. A special procedure is employed in moving an
45 order of so called "valuable" goods from the respective departments to the shipping department. "Valuable" goods are goods particularly susceptible to theft, such as cigarettes, furs, jewelry, guns, nylon hosiery, and like items. The special procedure is as follows:

In the gun department, the Ronson lighter department, and the fur department, the stockman of each of the said departments delivers the "valuable" goods ready for shipment to defendant's shipping platform guard in holding space opposite the shipping office on the shipping platform. Defendant's shipping platform guard watches the goods at all times while they are on the platform and during the loading process until the trailer is locked and sealed. In the sporting goods, camera, and silverware departments, respectively, the stockman delivers the goods ready for shipment to the elevator man, who, in turn, delivers them to the checker on the first floor; then the checker delivers the goods to the defendant's platform guard in the holding space opposite the shipping office on the shipping platform. In the costume jewelry department, the stockman calls the receiving department, and this department sends an elevator man who picks up the shipment and delivers it directly to defendant's shipping platform guard in the holding space opposite the shipping office on the shipping platform. Goods from the sporting goods, silverware and costume jewelry departments are watched by the defendant's shipping platform guard at all times while the goods are on the platform and during the loading process until the trailer is locked and sealed. In the cigarette department, when orders are ready for shipment, the number
46 one copy of the invoice is delivered to the supervisor of shipping. When the supervisor is ready to load the trailer which is to receive the shipment, the supervisor sends the elevator man to pick up the shipment and defendant's shipping platform guard is notified. The shipping guard meets the shipment on the platform and guards it while it is being loaded and the trailer locked and sealed. In the hosiery department orders are ticketed with a blue ticket. When a blue ticketed order reaches the first floor, it is delivered immediately to the front door of the store run

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for the Goldblatt store for which it is intended, and the defendant's shipping platform guard is notified. In the case of hosiery and all other blue-ticketed orders, the defendant's shipping platform guard meets the shipment on the shipping platform and guards it at all times until it is loaded onto the trailer and the trailer locked and sealed. In the case of furs belonging to customers which are received for storage and repair by Goldblatt's stores, other than the State Street Store, the furs are delivered to the shipping platform of the Wentworth Warehouse in sealed trailers. Defendant's shipping platform guard goes to the trailer upon its arrival and examines the seals to make sure that they are intact before the seals are broken. He guards the shipment of furs from the time the seals are broken and the trailer opened until the furs are loaded onto another trailer for the State Street Store and until that trailer is locked and sealed. In the case of all valuable goods shipped from the Wentworth Warehouse, defendant's shipping platform guard prepares a shipment memorandum listing the nature of the goods being shipped, the department number, number of pieces, bill number, trailer number and seal number. The said shipping platform guard then transmits the shipment memorandum by telephone to the defendant's front door guard. The front door guard in turn then transmits the information in the shipment memorandum to defend-
47 ant's guard or special service man stationed at the Goldblatt store to which the goods are being shipped. Valuable goods shipments to Goldblatt's Indiana Stores are daily handled in the foregoing manner.

d. Some shipments from Goldblatt stores, including the Indiana stores, are received, unloaded, and checked at the shipping platform. These include (1) so-called "returned goods" which are goods being returned from the stores to the warehouse, (2) "interstore transfers" which are goods being transferred from one store to another via the warehouse, and (3) baled waste paper. The bales of waste paper are picked up daily from the shipping platform by the trucks of the Pioneer Paper Stock Company or the Thomas Paper Stock Company. Thereafter the waste paper is manufactured into paper products, substantial portions of which are shipped in interstate commerce.

8.

a. Defendant employs four day guards and four night watchmen to guard the Wentworth Warehouse against fire, theft, or other casualty or damage of Goldblatt's physical property or goods. The duties of defendant's employees are as follows:

b. One day guard is employed by defendant as the receiving department guard. The first thing in the morning this guard unlocks the fire doors on all floors; unlocks the 12 steel doors in the shipping department and the 9 receiving doors on the truck and trailer receiving platform. He guards the entire receiving department and receiving platform described in paragraphs 4(b) and 6 hereof. He enforces the "No Smoking" regulation. He excludes unauthorized persons or persons other than the unloaders and checkers from the receiving department and platform. He is required to guard the goods throughout the receiving, unloading, and checking process. He locks the receiving doors during his lunch period and then un-
48 locks the doors after his lunch period. He locks the receiving platform doors at the end of the Goldblatt working day. He also relieves the defendant's shipping department guard for lunch.

The receiving department guard performs the foregoing activities from 7 a. m. to 5 p. m., Monday through Friday, with half an hour for lunch. He is paid $40.00 a week for this work. He is also employed from 7 a. m. to 5 p. m. on every third Saturday at the 63rd Street Warehouse described in paragraphs 19 through 23, inclusive, hereof. He is compensated at a straight hourly rate for his work. He is paid no additional compensation as overtime for hours worked in excess of 40 per week.

c. A second day guard of the defendant is employed in the shipping department of the Wentworth Warehouse described in paragraphs 4(d) and 7 hereof. He is required to guard the entire 1-story building. It is his duty to guard the 12 steel doors in the shipping department to see that unauthorized persons do not enter or leave the warehouse through these doors. He watches the goods in the "store runs." He guards the Goldblatt trailers and trucks as they are being loaded to see that no goods are stolen; this involves watching the loading of many vehicles at the same time at different points along the shipping and loading platform. As each load is completed the truck and

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trailer are locked and sealed by Goldblatt employees. Defendant's shipping department guard then checks the locks and seals on the side and rear before he permits the vehicle to depart. This guard controls the departure of all vehicles at the shipping platform. He is under a duty to see that no trucks depart until the locks and seals are in good order. This guard's duties with respect to the handling of "valuable goods" are described in paragraph 7(c) hereof.

49 It is also the duty of defendant's shipping department guard to admit to the shipping platform all incoming trucks and trailers including those carrying shipments as described in paragraph 7(d) hereof. This guard examines the seals on both the side and rear of all incoming Goldblatt trucks and trailers to see that they are intact. If a seal is not in order, this guard telephones the defendant's detective or special service man at the place of origin, including the Indiana store. This guard is charged with enforcing the "No Smoking" regulation. This guard is also charged with seeing that the 12 steel doors are locked.

Defendant's shipping department guard works from 8:00 a. m. to 5. p. m., Monday through Friday, and from 7 a. m. to 5 p. m. every other Saturday, with half an hour for lunch. He is paid $55 each week. No additional compensation as overtime is paid to him by defendant for hours worked each workweek in excess of 40.

d. A third day guard of defendant is stationed at the "front door" of the Wentworth Warehouse described in paragraph 4(c) hereof. All Goldblatt employees enter and leave by this front door. The defendant's front door guard admits the United States mailman three times a day to deliver mail to the Goldblatt mail clerk at the Wentworth Warehouse.

The defendant's front door guard checks all packages being carried out the front door. When a Goldblatt trailer or truck leaves the Wentworth Warehouse for a Goldblatt store too late to arrive before closing time, the front door guard relays this information by telephone to defendant's switchboard operator in defendant's central office at 343 South Dearborn Street, Chicago, Illinois. The switchboard operator telephones the defendant's detective or special service man at the Goldblatt store involved and notifies him that the trailer will arrive late and is to be received.

50 When it is necessary for persons either to remain in or enter the Wentworth Warehouse after the Gold-

blatt regular closing time, the defendant's front door guard is notified by defendant's central office. The front door guard then enters this information on the Watchman's Log for the use of defendant's night watchmen, identifying the persons who are to remain or enter the warehouse, and the approximate time thereof. A sample Watchman's Log used by all defendant's guards and watchmen is attached hereto, marked Exhibit 5, incorporated herein, and made a part hereof. At the close of business, the defendant's front door guard turns over his station to a 2-man crew of defendant's night watchmen.

The defendant's front door guard is employed from 7 a. m. to 5 p. m., Monday through Friday, and every other Saturday, with a half hour for lunch. He is paid by defendant a straight weekly salary of $49.00 with no additional compensation as overtime for hours worked each workweek in excess of 40.

e. A fourth day guard of defendant is employed as the head house detective at the Wentworth Warehouse. He is in charge of all defendant's day guards at this warehouse. He is responsible for protecting during the day the buildings composing the Wentworth Warehouse, the merchandise therein, and the operations carried on within this warehouse. He patrols the entire warehouse, guarding against fire and theft and other hazards. He is required to remove the time tape for the previous night from the time lock on the front door, described in paragraph 4(c) hereof. He examines the time tapes and checks them against the entries in the night watchman's log to see that no unauthorized openings of the front door were made. The head house detective must also make certain that the time lock on the front door is set and in operating order at the warehouse closing time. He checks the time clock tapes to see that the night watchmen have made all
51 proper stations during the night. He is responsible for preserving the tapes for inspection by the Cook County Inspection Bureau. The Cook County Inspection Bureau approves or disapproves the security measures taken by insurance policyholders. Upon the basis of its findings the Cook County Inspection Bureau determines whether the policyholders shall be permitted to continue their insurance, whether premium discounts shall be allowed, or whether additional premiums shall be charged.

He has charge of the supply of seals used by the entire

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Goldblatt system to seal trucks and trailers. He regularly supplies seals to each of the various stores and warehouses for their use. He keeps a record of the seals. He also requisitions a new supply of seals when required.

The head house detective also apprehends dishonest employees or strangers. He makes a record and report of any arrests or incidents to defendant's central office on forms, copies of which are attached hereto, marked Exhibits 6, 7, 8, and 9, incorporated herein, and made a part hereof. In addition he prepares a monthly report of stolen goods recovered and restitution paid in connection with thefts.

The head house detective relieves the receiving department guard when the latter relieves the shipping department guard. He relieves any of the day guards whenever occasion requires. When working as a relief guard he performs the same work performed by the guard relieved. The head house detective prepares the records of hours worked daily and salary rate for all defendant's day guards and night watchmen working at the Wentworth Warehouse. These time sheets are submitted weekly to the defendant's main office where the records are completed. The head house detective is responsible for turning over to the night watchmen the protection of the warehouse.

The head house detective works from 8 a. m. to 5:15 p. m., Monday through Friday, and approximately two Saturdays out of every three. He is allowed an hour for lunch. He is paid a straight salary of $60 per week
52 with no additional compensation as overtime for hours worked each workweek in excess of 40.

9.

a. There are two 2-man crews of night watchmen employed by defendant at the Wentworth Warehouse. The first crew works the early shift and the other crew works the late shift. The crews alternate shifts weekly, working the following schedule:

Shift	Watchman	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat
1	A	7 a. m. to 1 p. m.	5 p. m. to	5 p. m. to	5 p. m. to	Off	5 p. m. to	5 p. m.
	B	1 p. m. to 7 p. m.	12 M.	12 M.	12 M.		12 M.	a. m. 8
2		7 p. m. to 7 a. m. Mon.	12 M to 7 a. m. Tues.	12 M. to 7 a. m. Wed.	12 M to 7 a. m. Thurs.	5 p. m. to 7 a. m. Fri.	12 M. to 7 a. m. Sat.	Off

b. The 2-man crew of night watchmen take over from the defendant's front door guard at the front door. They receive oral instructions including the location of railroad freight cars on the warehouse railroad track. They read the Watchman's Log on which will be noted authorized special openings and special instructions. After all Goldblatt employees have been checked out the night watchmen lock the front door. The door is equipped with a time lock and every opening of the door is recorded on a tape. All openings must be authorized and must be explained on the Watchman's Log. No emergency opening may be made unless authorized by defendant's central office. If an emergency arises, that authorization may be obtained by telephone. Between 5 and 6:15 p. m. both
53 night watchmen check all of the receiving and shipping doors, fire doors, fire escape doors, and windows to see that they are properly locked.

c. Beginning at 6:15 p.m., the defendant's night watchmen alternate in making hourly rounds of 20 key stations located as follows:

Station No.	Floor	Station No.	Floor	Station No.	Floor
1	Front Door	8	4th Southwest	15	2d Northeast
2	7th Northeast	9	(Hosiery Sec. (4th North	16	1st Northeast
3	7th Southwest	10	3d Northeast	17	1st—Receiving Office
4	6th Southwest	11	(3d Lamp Dept. (Adm. Bldg.	18	1st—Shipping Dept. Southwest
5	6th Northeast	12	3d Southwest	19	Basement—Boiler Room at Tobacco Dept.
6	5th Northeast	13	2d Southwest		
7	5th Southwest	14	2d Adm. Bldg.	20	Front Door

These stations are so located as to require the night watchmen to cover the entire Wentworth Warehouse, guarding all goods in various stages of receiving and preparation for shipment and all doors and windows and other possible means of entry into the warehouse. The

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first round starts at station 1 at the front door where one watchman takes the key and turns it in the keyhole. This records the time on a tape contained in a clock in the lobby. An indicator on the key records an additional number each time the key is turned. The watchmen then go to the elevator opening into the Administration building and the 7-story building and ride to the seventh floor. The watchman carrying the key gets off the elevator at the seventh floor. The second watchman returns the elevator to the second floor and takes his post near the Fashions Department
54 where he watches the fire escape door and the windows over the freight cars. The watchman on the seventh floor walks north in the center aisle past various warehouse sections to station No. 2 in the northeast corner. He then retraces his steps, going south the full length of the building and to station No. 3 at the southwest corner of the seventh floor. He then descends to the sixth floor to station No. 4 in the southwest part of the building directly under station No. 3. He proceeds to the other stations in a similar manner. As he patrols the entire building he examines all doors and windows to see that they are secure, that no fire escape doors are blocked open, that the night lights are on, and that other lights are off. He also passes all departments and guards the goods that are warehoused and being prepared for shipment. When he leaves station No. 16, which is on the receiving platform on the first floor of the northeast corner of the 7-story building, he passes the 22 receiving doors and checks them to see that they are closed and locked. In the shipping department he observes the goods in store runs in readiness for loading. He also observes the conditions of the partially loaded trailers or trucks and any trailers or trucks that may be locked or sealed. He is also charged with observing the 12 steel doors in the shipping department to see that they remain closed and locked. Station 18, at the west wall in the south end of the shipping department, is near a valve closet. The valve closet houses a valve connected with the automatic sprinkler system. One of the duties of the watchman is to watch that the sprinkler system does not start sprinkling and cause water damage when there is no fire. In case of fire the
54 watchman would call the City Fire Department. A fire alarm box signal for the Chicago Fire Department is located on every other floor. At the same time, he would also utilize the fire extinguisher. At station 19 in the boiler room he checks to see that the tobacco department door is

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properly locked. He then returns upstairs to his final station, No. 20, at the "front door." A round consumes from 30 to 45 minutes. This watchman remains at his station at the "front door" until time for the next round. During the period that he is at the "front door" he controls the ingress and egress of all persons to or from the building. He cannot permit any employee or other person to leave or enter the building without specific authorization entered on the Watchman's Log. Entrance by authorized persons may be made only by the use of two keys. One is used for the time lock and one is used for the door lock. If any emergency arises requiring the opening of the door, not previously authorized, the watchman is required to telephone defendant's night supervisor of watchmen for authorization. The Goldblatt mailman regularly picks up the interstore mail at about 7 p.m. This opening of the door is an authorized special opening.

d. The second watchman is stationed in the north section of the second floor of the 7-story warehouse outside the Fashions Department (women's coats). He is armed with a shotgun. His special responsibility is to guard against entering through windows in the east wall accessible from the tops of railroad freight cars on the railroad siding. He is notified at the beginning of his shift of
56 the position of all railroad freight cars on the railroad siding. In the past, thieves used the freight cars to obtain entrance through the windows and have taken valuable goods from the Fashions Department. Because of the danger of breaking in through these windows, the watchman looks out a nearby window to detect prowlers on or around the railroad cars or in the street below. He investigates noises or commotions outside the warehouse, but does not leave the building. He calls the City Police if he detects any prowlers around the warehouse or freight cars. Once an hour the night watchman stationed at the "front door" signals the second floor guard to start his round. Both men meet at the "front door" and the second floor watchman takes the clock key and inserts it in key station No. 1 at the front door. The men then proceed by way of the elevator to the seventh floor.

e. The defendant's night watchmen are paid at a straight hourly rate with no additional overtime compensation for the hours regularly worked in excess of 40.

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10.

Ashland Warehouse and Garage.

a. Goldblatt maintains a warehouse and garage at 3161 South Ashland Avenue, Chicago, Illinois, hereinafter called the "Ashland Warehouse" and "Ashland Garage" respectively. The said structure has a frontage on Ashland Avenue of 630 feet and extends in depth 455 feet east. A blueprint of the first floor of the structure is attached hereto, marked Exhibit 10, incorporated herein, and made
57 a part hereof. The northerly 320 feet of the structure constitutes the Ashland Warehouse.

b. The Ashland Warehouse consists of three interconnected buildings. One building is the dock building which fronts on Ashland Avenue and extends east approximately 180 feet. The second building is a 2-story building having a common wall with the dock building and extending east approximately 210 feet. The third building is a train shed having a common wall with the 2-story building and extending east approximately 65 feet.

c. In the train shed, at the northern end, is a truck receiving platform where goods brought into the Ashland Warehouse by truck and trailer are received. In the east wall are six receiving doors through which the goods are brought to the truck receiving platform. In the south wall of the train shed is a large electrically operated steel door; through this doorway a double railroad track with a capacity of 10 freight cars extends north into the train shed about 250 feet. This double railroad track is flanked on both sides by a railroad receiving platform. Three large fire doors connect with the 2-story building.

d. The 2-story building is used for warehousing of goods brought into the Ashland Warehouse. It also contains Goldblatt's office which handles paper work in connection with the goods warehoused in the Ashland Warehouse and Garage. In this building are three freight elevators; one opens into the train shed and the 2-story building and two elevators open into the dock building.
58 Three large fire doors connect with the dock building.

e. The east half of the dock building is used for the warehousing of goods. The west half of the building is the shipping department for the Ashland Warehouse and Garage. A truck pit at street level, 60 feet wide and 310 feet long, extends along the west wall of the building. Trucks and trailers enter and leave the truck pit through

electrically controlled doors, one door in the west end of the north wall, one door at the north end, and one at the south end of the west wall, facing Ashland Avenue. The south door is the one most frequently used by trucks and trailers. Adjacent to the south door is the guard's booth where the electrical control of the door is located. A pedestrian door is located directly south of the guard's booth. During the Goldblatt working day this pedestrian door is used by all Goldblatt employees or other persons entering or leaving the dock building. At all other times, this door is used by all warehouse employees entering or leaving the entire Ashland Warehouse. A loading and shipping platform approximately 3½ feet above the truck pit and at truck bed level extends the full length of the pit. Behind the loading and shipping platform are "store runs" which occupy the north third of the shipping platform and "delivery runs" which occupy the south two-thirds of the platform and an "O" run between them. In the "store runs" are goods assembled for shipment to a particular store. In the "delivery runs" are goods assembled for shipment to customers of Goldblatt's stores; each run covers a particular area. There is a special run designated as the "O" run, which is the run used for Goldblatt's Hammond, and Gary, Indiana delivery base; the latter delivery base
59 is the distribution center for the delivery of goods to Goldblatt customers located within 30 miles of Hammond, and Gary, Indiana, and in Illinois, south of 115th Street in Chicago and east of U. S. Route 45. These runs are about 10 feet wide and 40 feet long. Behind the store, "O," and delivery runs, and in the middle of the building, is the shipping office.

11.

a. The Ashland Garage has a frontage on Ashland Avenue of about 300 feet and a depth of 375 feet. It consists of five interconnected buildings, namely, the garage warehouse building, the west loading building, the east loading building, the garage shop, and the office building. See Exhibit 10 hereof.

b. The garage warehousing building is a 1-story structure about 120 feet wide, facing on Ashland Avenue and extending east about 230 feet; it has common walls with the garage shop and west loading building. It is used for the warehousing of heavy and bulky items, such as stoves,

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refrigerators, and washing machines. Incoming goods to be warehoused in the garage warehousing building are delivered directly into this building for receiving, unloading, and checking. Trucks and trailers carrying such incoming goods enter from Ashland Avenue through the electrically controlled garage door located at the southwest corner of the building. Goods picked up from the garage warehousing building for shipment to Goldblatt's stores are transported by lift truck through either of the two doors in the garage warehousing building, through the
60 electrically controlled garage door in the west loading building, and to the shipping platform in the dock building described in paragraph 10(e) hereof. The control for the electrically controlled door described above is located in the guard's booth, adjacent to said door.

The east and west loading buildings cover the north 145 feet of the Ashland Garage. It has a common wall on the north with the dock building and the 2-story building, and a common wall on the south with the garage warehousing building and the garage shop. It houses the equipment used in the sorting and loading of packages which have already been sold to customers by all Goldblatt stores, except South Bend, and Joliet, for delivery in Chicago north of 115th Street. Interstore mail is also sorted here.

c. The garage shop covers a space 144 feet by 120 feet. It has common walls with the garage warehousing building and the east loading building. It is used for the repairing, rebuilding, and maintaining of the Goldblatt motor transportation fleet and contains all the essential equipment for such work.

d. In the office building located west of the west loading building is located the office of Goldblatt's superintendent for the Ashland Garage, including the package distribution service.

12.

a. Approximately 65 per cent of the goods received at the Ashland Warehouse and Garage is regularly and daily received in interstate commerce from points outside of the State of Illinois. Merchandise having a sales value of over
12½ million dollars was received at the Ashland Ware-
61 house and Garage during each of the fiscal years ending January 31, 1950 and 1951. Approximately 20 per cent of the merchandise shipped from the Ashland Warehouse and Garage is regularly and daily shipped to Gold-

blatt's stores or customers in Hammond, Gary, and South Bend, Indiana, and approximately 80 per cent to its stores and customers in Illinois. During each of the fiscal years ending January 31, 1950 and 1951 merchandise having a sales value of over 12½ million dollars was shipped to Goldblatt stores or to customers of Goldblatt stores from the Ashland Warehouse and Garage.

b. The goods handled at the Ashland Warehouse and Garage are characterized as "hard lines" or "bulk merchandise." These goods include rugs, carpets, linoleum, springs and mattresses, refrigerators, sewing machines, radio and television sets, electric and gas ranges, washing machines, and furniture of almost every description including unfinished furniture, upholstered furniture, metal furniture, studio couches, and folding beds.

c. Goldblatt employs approximately 150 persons at the Ashland Warehouse and Garage in the receiving, unloading, checking, unpacking, storing, handling, assembling, repacking for delivery, servicing, transporting to store, "O," and delivery runs, distributing, and shipping of merchandise to Goldblatt's department stores and customers thereof.

13.

At the truck and railroad receiving platforms of the Ashland Warehouse, described in paragraph 10(c) hereof, and in the garage warehouse building in the Ashland
62 Garage, described in paragraph 11(b) hereof, Goldblatt employees are engaged daily in receiving, unloading, and checking incoming goods, and depositing them on the platforms or floor of the garage warehouse building. Approximately 65 per cent of these goods is received in interstate commerce from points without the State of Illinois. Fifty to 60 trucks and trailers are daily received and goods therefrom unloaded and checked at the truck receiving platform and in the garage warehouse building. An average of 8 freight cars a week are received and goods therefrom unloaded and checked at the railroad receiving platforms. Shrubs, plants, fertilizer, and garden goods received during the early spring are stored under a large canvas or tent in the outdoor space in the rear of the east loading building adjacent to the railroad tracks. Goldblatt's receiving clerk makes up the upper half of the "receival." See Exhibit 3. The incoming goods after

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being unloaded and checked are moved by use of lift trucks to various places of storage in the train shed, in the 2-story building, in the east portion of the dock building, and in the garage warehouse building. In each stock department the goods are unpacked, counted, checked, marked, and placed in stock. Here the lower half of the "receival" is completed. Orders for all Goldblatt stores are filled from said stock departments.

14.

a. On the first floor of the 2-story building in the Ashland Warehouse, described in paragraphs 10(b) and 10(d) hereof, Goldblatt maintains a furniture renovating shop.
In this shop Goldblatt employs approximately 30 em-
63 ployees who perform every character of job in reconditioning, upholstering, repairing, replacing broken parts, assembling, refinishing, and polishing furniture. This includes furniture which has been damaged while on display in the stores or damaged in transit. Here all furniture to be shipped from the Ashland Warehouse is uncrated, examined, repaired, or refinished, as necessary, and polished before delivery is made to customers of Goldblatt's department stores.

b. On the second floor of the 2-story building in the Ashland Warehouse, Goldblatt employs 50 employees in the Radio and Television Clinic. These employees remove television and radio sets from their cases. They also repair new, display and customers' sets. These employees perform the foregoing functions for all Goldblatt's stores and customers thereof. On the second floor of this building Goldblatt employs 12 employees in the Carpet and Linoleum Department. Here carpets and linoleum are cut to size. Carpeting is serged or edged and bound. Carpets and linoleum are prepared for laying. This work is performed for all Goldblatt's stores and customers thereof.

c. In the basement of the 2-story building in the Ashland Warehouse, Goldblatt employs four employees who unpack sewing machines, sewing machine accessories, and cabinets. Accessories are attached to the sewing machines and the sewing machines are tested. The sewing machines are then installed in cabinets or portable cases.

64 15.

a. The normal procedure followed at the Ashland Warehouse and Garage by Goldblatt employees in filling

orders from stock is as follows: Merchandise is picked from stock as required by the particular order. The picking of the order is usually done by lift trucks. Thereafter, the goods are hauled to the appropriate store run, "O" run, or delivery run behind the shipping and loading platform in the dock building, described in paragraph 10(e) hereof. Wood and upholstered furniture must first be taken to the furniture renovating shop for inspection, polishing, and repair if required, before being delivered to the run. Goods are loaded from the runs onto Goldblatt trucks and trailers. Throughout the day as goods for delivery to customers are loaded onto trucks they are replaced in the runs by other goods for later delivery. A trip sheet is made up for each truck load. See Exhibit 4. The trucks and trailers are then locked by Goldblatt employees. The trailers are also sealed, side and rear, and the seal number noted by defendant's day guard stationed at the shipping department. Thereafter the goods are transported either to Goldblatt's stores, including the three Indiana stores, or to customers of Goldblatt stores, some goods being transported via the Hammond and Gary base, described in paragraph 10(e) hereof. Between 15 and 25 trailers are shipped to Indiana weekly. Goods assembled in the store runs, "O" run, or delivery runs, which have not been loaded onto trucks and trailers by quitting time remain in the runs until the next working day. Similarly, trucks or trailers which are loaded and sealed, or partially loaded, or empty, remain in the warehouse until the next working day.

65 b. Sealed shipments are daily received at the shipping platform in the dock building from Goldblatt's stores. These include (1) "returned goods," (2) "interstore transfers," and (3) "customer goods," such as used washing machines turned in as a credit on the purchase of a new machine. Such shipments are daily received from Goldblatt's Indiana stores.

c. The normal procedure followed by Goldblatt employees for the handling of packages sold by all Goldblatt stores, except South Bend, Indiana, and Joliet, Illinois, described in paragraph 11(b) hereof, is as follows: The packages are delivered by trailer from the aforesaid Goldblatt stores. The trucks enter from Ashland Avenue through the electrically controlled garage door located at the southwest corner of the west loading building and proceed to the package platform near this door. At least one

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trailer a day is received from Indiana at the package platform. At least one trailer a day leaves the package platform for Indiana. The packages are sorted by means of a conveyor belt. Interstore mail is also sorted in this unit and thereafter distributed to the various Goldblatt establishments.

16.

In the garage shop, described in paragraph 11(c) hereof, Goldblatt employs seven mechanics, one washer, and one tire changer in the repairing, rebuilding, and maintaining of Goldblatt's entire motor transportation
66 fleet. This fleet consists of 129 trucks, 17 tractors, and 70 trailers. The shop is equipped to perform all mechanical repair and maintenance work, including the installation of new motors and other parts.

17.

a. Defendant employs 2 day guards at the Ashland Warehouse and from four to six night watchmen to guard the Ashland Warehouse and Garage against fire, theft, or other casualty or damage. The duties of defendant's employees are as follows:

b. One day guard employed by defendant is stationed at the truck and railroad receiving platforms described in paragraphs 10(c) and 13 hereof. In the morning, the first thing this guard does is unlock the six truck receiving doors. He guards both the truck and railroad receiving platforms. He enforces the "No Smoking" regulations. He checks the fire doors to see that they are not blocked and will operate. He excludes unauthorized persons or persons other than the unloaders and checkers from the receiving platforms. He is required to guard the goods throughout the receiving, unloading, and checking process. He locks the six truck receiving doors during his lunch period and then unlocks the doors after his lunch period. The day guard on duty locks the truck receiving doors at the end of the Goldblatt working day.

67 c. A second day guard employed by defendant is stationed in the guard booth near the southwest corner of the truck pit in the shipping department of the dock building described in paragraphs 10(e) and 15(a) and 15(b) hereof. It is his duty to guard and operate the electrically controlled doors. He opens the doors to admit

either trucks or trailers to the shipping platform or to permit their egress. It is his duty to guard the entire shipping department, including the store, "O," and delivery runs. He guards the Goldblatt trailers and trucks as they are being loaded to see that no goods are stolen; this involves watching the loading of many vehicles at the same time at different points along the shipping and loading platform. As each trailer load is completed, the trailer is locked by the defendant's guard. This guard affixes metal seals on the trailer, side and rear. He records the numbers of the seals, the trailer number, the time of departure, and the destination of shipment of the outgoing trailer. Between three and five trailers leave the shipping platform daily for Indiana.

All trailers belonging to Goldblatt's entering the shipping department in the dock building are sealed, side and rear. The defendant's guard checks the incoming Goldblatt trailers, removes the seals from the rear and side doors, records the seal number, the trailer number, time of arrival, point of origin, and whether trailer carried a shipment. An average of three to five trailers are received each day from Indiana. This guard makes
68 and receives telephone calls with regard to shipments to and from all Goldblatt stores. He makes a record of such calls in a log book. Trailers that are sealed and contain goods are frequently received for overnight storage. This day guard also receives and sorts the interoffice mail and U. S. mail for the Ashland Warehouse and Garage.

d. Until February 1, 1951, a third day guard employed by the defendant was stationed in the guard's booth at the southwest corner of the west loading building. The guard's booth is directly adjacent to the electrically controlled garage door, described in paragraphs 11(b) and 15(c) hereof. The guard's booth contains the electric switch for opening and closing the garage door. This guard opened this garage door to admit or permit the passage of every vehicle passing in or out of the building. Goods picked from the stock in the garage warehousing building for shipment are transported by lift truck through this door to the shipping platform in the dock building. All incoming goods received in the garage warehousing building, as described in paragraph 11(b) hereof, are also admitted through this door. This day guard was required to record the time of entry of all incoming Goldblatt trailers ad-

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mitted through this garage door; he also broke the seals on the trailers if the trailers were to be unloaded. The guard was also required to seal, front and side, all Goldblatt trailers leaving the Ashland Garage during his shift, to make a record of the seal numbers, the time of departure, and the destination of the trailer. This guard also enforced the "No Smoking" regulations. At the end of a half day's work this day guard exchanged posts with the day guard stationed at the receiving platform, as described in paragraph 17(b) hereof. Since February 1, 1951, the duties of this guard have been performed by a Goldblatt employee.

69 e. Until January 1, 1949, a fourth day guard was employed by defendant as the head house detective at the Ashland Warehouse and Garage. He was in charge of all defendant's day guards at this warehouse. He was responsible for protecting, during the day, the building composing the Ashland Warehouse and Garage, the merchandise therein, and the operations carried on therein. He patroled the entire premises, guarding against fire, theft, and other hazards. He removed the clock disks from the key clocks carried by the defendant's night watchmen and inserted fresh disks. He checked the clock disks to see that the defendant's night watchmen had made their proper rounds and checked the Watchman's Log kept by the night men. A clock disk is attached hereto, marked Exhibit 11, incorporated herein, and made a part hereof. He preserved the clock disks for examination by the Cook County Insurance Inspection Bureau, described in paragraph 8(e) hereof.

The head house detective also apprehended dishonest employees or strangers. He made a record and report of any arrests or incidents to defendant's main office on forms, copies of which are attached hereto as Exhibits 6, 7, 8, and 9. In addition, he prepared a monthly report of stolen goods recovered. He relieved the other three day guards, described above, should occasion require.

Until January 1, 1949, the head house detective prepared the records of hours worked daily and salary rate for all defendant's day guards and night watchmen working at the Ashland Warehouse and Garage. Since Janu-

70 ary 1, 1949, this work has been performed by the day guard described in 17(c) hereof. These records are submitted weekly to the defendant's main office where the records are completed.

Until January 1, 1949, the head house detective was responsible for turning over to the night watchmen the protection of the warehouse. Since January 1, 1949, this responsibility is now that of the day guard described in paragraph 17(c) hereof.

f. Defendant's two day guards stationed in the Ashland Warehouse and Garage, described in paragraphs 17(b), (c) and (d) hereof, work from 7 a. m. to 5 p. m., Monday through Saturday, or a total of 60 hours weekly. They are paid by defendant straight weekly salaries and receive no additional compensation as overtime for hours worked in excess of 40.

18.

a. Defendant has a night watchman stationed in the guard's booth near the southwest corner of the truck pit in the shipping department of the dock building to protect the Ashland Warehouse between 5 p. m. and 7 a. m., Monday through Saturday, and 24 hours on Sunday and holidays. This is the same station manned by the day guard, described in paragraph 17(c) hereof. It is the night watchman's duty to admit all Goldblatt's trucks and trailers which are regularly received from all Goldblatt's establishments. These are admitted by him through the electrically controlled doors. He is required to check in all of the incoming trailers. He records the time of arrival of the trailer, the seal numbers, and any irregularity in the appearance of the seals, trailer numbers, point of origin, and whether the trailer is loaded or empty.

71 These trailers are admitted either for overnight storage or for loading or unloading at the shipping platform the next working day. It is also the night watchman's duty to check any pedestrian entering or leaving the Ashland Warehouse and Garage. He performs the foregoing activities from the time he comes on duty at 5 p. m. until the last trailer is checked in and driver checked out at about 9 p. m.

After the last driver is checked out the night watchman locks the guard's booth and the pedestrian door, and the power door. He then takes his key clock and begins his hourly rounds of 12 key stations located as follows:

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Station No.	Floor	Building	Station No.	Floor	Building
1	SW Cor.—2d	2-Story & Basement Building	7	NE Cor.—Basement	2-Story & Basement Building
2	NW " —2d	"	8	NW Cor.—Basement	"
3	NE " —2d	"	9	SE Cor.—Basement	"
4	SE " —2d	"	10	SW Cor.—Basement	"
5	S Wall	Train Shed west of rail entrance door	11	SE Cor.	Dock Building
6	NE Cor.	Train Shed	12	NW Cor.	"

These stations are so located as to require the night watchman to cover the entire Ashland Warehouse, guarding all goods that are in various stages of receipt, storage, and preparation for shipment, and all doors and other possible means of entry into the warehouse. The watchman's hourly tour begins and ends at the guard's booth. On his tour of duty he must check all fire escape doors and see
72 that these doors are padlocked on the inside. He also checks the fire doors to see that they are secure. He must take particular care to check the door leading to the roof in the men's washroom on the second floor of the 2-story building.

He guards against damage by leaks and overflows in the plumbing, the roof, and ventilators; in the event he discovers such threatened water damage, he notifies Goldblatt's engineer, stationed in the boiler room at the rear of the garage shop. He watches the goods in all the runs, as well as in partially loaded trailers, at the shipping platform. At the truck and railroad receiving platforms, he checks the six receiving doors and guards the railroad freight cars which may be loaded, partially loaded, or empty. During the night an average of eight freight cars a week are delivered and picked up at the train shed. It is the duty of the night watchman to open the electrically controlled steel door in the south end of the train shed and admit the railroad freight cars and crew. He records the time of arrival of the freight cars, the serial numbers of the cars, and the name of the railroad company; he turns this record over to defendant's day guard described in paragraph 17(c) in the Ashland Warehouse. The night watchman must remain on the railroad receiving platforms during the entire time the railroad crew is in the train shed. Before permitting the removal of empty freight cars, he inspects them to see that no goods are on board.

As soon as the railroad crew leaves, he closes and secures the door. His tour of duty takes him past the furniture renovating shop, the Radio and Television Clinic, the sewing machine department, and across the carpet and
73 linoleum department in paragraph 14(b) hereof. In case of fire, it is the duty of the night watchman to call the American District Telegraph by means of a fire alarm signal box located on each floor. At the same time he would utilize a fire extinguisher. Should the automatic sprinkler system start when there is no fire, the night watchman must shut off parts of the system to prevent damage.

b. Defendant has a night watchman stationed in the guard's booth at the southwest corner of the west loading building to protect the Ashland Garage between 5 p. m. and 9 a.m., Monday through Friday, and 24 hours on Saturday, Sunday, and holidays. From 5 p. m. to about 9:30 or 10 p. m., the basic responsibilities of this night watchman are the same as those of the day guard who manned this station until February 1, 1951, as described in paragraph 17(d) hereof; the night watchman performs these duties until the last truck or trailer is checked in and parked.

After the last truck has been parked, this night watchman locks the guard's booth, takes his key clock, and begins his hourly rounds of seven key stations located as follows:

Station No.	Location
1	Adjacent to guard's booth.
2	SW corner of garage warehouse building.
3	East wall of garage shop next to garage exit door.
4	NE corner of the east loading building.
5	North wall of the west loading building at package bridge.
6	In the men's washrooms on 2d floor of office building.
7	Same as No. 1.

74 These stations are so located as to require the night watchman to cover the entire Ashland Garage, guarding all goods in various stages of receipt, storage, and preparation for shipment; all trucks and trailers in the garage; and all doors and other possible means of entry

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into the warehouse. The watchman's hourly tour begins and ends at the guard's booth. On his tour of duty he must check all fire escape doors to see that those doors are padlocked on the inside. He also checks the fire doors to see that they are secure. He guards against damage by leaks and overflows in the plumbing, the roof, and ventilators; in the event he discovers such threatened water damage, he notifies Goldblatt's engineer, stationed in the boiler room at the rear of the garage shop. In case of fire, it is the duty of the night watchman to call the City Fire Department. At the same time he would utilize a fire extinguisher. Should the automatic sprinkler system start when there is no fire, the night watchman must shut off the system to prevent damage.

Between his hourly tours the night watchman is stationed in the guard's booth, and admits or checks out employees, trucks and trailers in the manner described above. He also checks in or out Goldblatt's road service mechanic who is stationed in the garage shop for emergency calls during the night. At about 5 a. m. the night watchman checks out Goldblatt's truck carrying advertising circulars to the Indiana stores.

c. For approximately three months during the late winter and early spring, defendant has a night watchman stationed in the rear of the east loading building between 5 p. m. and 7 a. m., Monday through Saturday, and 24 hours on Saturday, Sunday and holidays. This night watchman protects shrubs, plants, fertilizer, and garden goods stored under a large canvas or tent, described in paragraph 13 hereof. This watchman patrols the entire area in which the goods are stored, making clocked stations consecutively. It is his duty to guard the aforesaid goods against theft, wind, fire, and other hazards. He must guard particularly against possible theft by train crews engaged in delivering or picking up railroad freight cars at the train shed, or spotting such cars in the rear of the east loading building. This night watchman must also guard such railroad freight cars spotted on the outside of the train shed.

d. Defendant's night watchmen stationed inside the Ashland Warehouse and Garage, described in paragraphs 18(a) and (b) hereof, work the following schedule:

Shift	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
		Relief					
	7 a.m.	5 p.m.	5 p.m.	5 p.m.	5 p.m.	5 p.m.	9 p.m.
1	to	to	to	to	to	to	to
	7 p.m.	9 p.m.	12 M.	12 M.	12 M.	12 M.	7 a.m.
							Sun.
							Relief
	7 p.m.	9 p.m.	12 M.	12 M.	12 M.	12 M.	5 p.m.
2	to	to	to	to	to	to	to
	9 a.m.	9 a.m.	9 a.m.	9 a.m.	9 a.m.	9 a.m.	*9 p.m.
	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	

* 24 hour watch service at garage on Saturday.

Defendant's night watchmen stationed outside the warehouse, described in paragraph 18(c) hereof, protecting the shrubs, plants, etc., work the following schedule:

76

Shift	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
			Off—Relief				
	8 a.m.	5 p.m.	5 p.m.5	5 p.m.	5 p.m.	5 p.m.	8 a.m.
1	to	to	to	to	to	to	to
	8 p.m.	12:30	12 M.9	12:30	12:30	12:30	8 p.m.
					Relief		
	8 p.m.	12:30	12 M.9	12:30	12 M.5	12:30	8 p.m.
2	to	to	to	to	to	to	to
	8 a.m.	8 a.m.	7 a.m.8	7 a.m.8	7 a.m.9	7 a.m.	8 a.m.

Only one night watchman mans a particular station during a shift. For each station there are two regular night watchmen and a relief night watchman. All of defendant's night watchmen are employed at a straight hourly rate of 90 cents for approximately a 50-hour week, and do not receive additional compensation as overtime for hours worked in excess of 40 per week.

19

63rd Street Warehouse.

a. Goldblatt maintains a warehouse at 201 East 63rd Street, Chicago, Illinois, hereinafter called the "63rd Street Warehouse." This warehouse is a 2-story and basement brick structure fronting on the south side of 63rd Street. The 63rd Street Warehouse is 400 feet wide and 200 feet deep. The warehouse contains 100,000 square feet of floor space. The second floor covers the front section of the building. A blueprint of the first floor of the 63rd Street Warehouse is attached hereto, marked Exhibit 12, incorporated herein, and made a part hereof.

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b. In the center of the west wall of the 63rd Street
77 Warehouse is an electrically operated steel door through which trucks and trailers enter and leave the truck pit. The truck pit is approximately 50 feet wide and extends east from the west wall into the warehouse approximately 110 feet. On the north side of the truck pit is a truck receiving platform where goods brought into the warehouse by truck and trailer are received. This truck receiving platform extends the length of the truck pit. At the east end of the truck pit and extending the width of the pit is a loading and shipping platform. Directly behind the loading and shipping platform are located the store runs.

c. Directly adjacent to the east wall of the 63rd Street Warehouse and running almost the entire length of the east wall is a railroad siding capable of accommodating five railroad cars. From freight cars on this railroad siding goods are unloaded, checked by Goldblatt's employees, and brought into the warehouse through three receiving doors located in the east wall and deposited on a railroad receiving platform just inside the east wall of the warehouse.

d. In the basement is housed the boiler room and building machinery.

e. Goods are warehoused throughout the building by departments and so arranged as to allow aisles and cross aisles to permit handling.

78 20.

a. Approximately 50 per cent of the incoming goods received at the 63rd Street Warehouse is regularly and daily received in interstate commerce from points outside of the State of Illinois. Merchandise having a sales value of over 10 million dollars was received at this warehouse during each of the fiscal years ending January 31, 1950 and 1951. Approximately 17 per cent of the goods shipped from this warehouse is regularly and daily shipped to Goldblatt's stores in Hammond, Gary, and South Bend, Indiana, and approximately 83 per cent to its stores in Illinois. During each of the fiscal years ending January 31, 1950 and 1951, merchandise having a sales value of over 10 million dollars was shipped to Goldblatt stores from the 63rd Street Warehouse.

b. The goods handled at this warehouse are groceries,

liquors, beer, candies, and cookies, as well as garden tools and pet shop supplies. During the 12-month period ending January 31, 1950, Goldblatt sold $17,207,154 worth of food products in all of its retail stores; of this amount, in excess of 10 million dollars represents food products which were handled and shipped from the 63rd Street Warehouse. Liquors and beer are not shipped to Indiana Stores.

c. Goldblatt employs approximately 26 persons at the 63rd Street Warehouse in the receiving, unloading, checking, unpacking, storing, handling, assembling, packaging, packing, transporting to store "runs," distributing, and shipping of goods to Goldblatt's stores.

79 21

At the truck and railroad receiving platforms of the 63rd Street Warehouse, described in paragraphs 19(b) and (c) hereof, Goldblatt's employees daily receive, unload, and check incoming goods, 50 per cent of which goods is received in interstate commerce from points without the State of Illinois. The employees deposit these goods on the truck and railroad receiving platforms. Shipments from 25 to 30 trucks and trailers are daily received at the truck receiving platform; an average of three freight cars per week are received at the railroad receiving platform. Goldblatt's receiving clerk makes up the upper half of the "receival." See Exhibit 3. The goods, after being unloaded and checked, are then moved by Goldblatt's employees to the appropriate stock department and there unpacked, counted, checked, and placed on shelves, in bins, or stacked. Butter, eggs, and cheese are placed in a cooler, and liquor and beer are placed in a vault for safekeeping. In each stock department the lower half of the "receival" is completed. Orders for all Goldblatt stores are filled from said stock departments.

22.

The normal procedure followed at this 63rd Street Warehouse by Goldblatt's employees in picking orders from stock is as follows: Merchandise is picked from stock as required by a particular store order. This order is then checked and packed in containers such as cartons or boxes. This order is then placed on a handling truck

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and transported to the appropriate store run located
80 on the loading and shipping platform, described in paragraph 19(b) hereof. Goods are then loaded from the store runs onto Goldblatt trucks and trailers. After the goods are loaded, the vehicle is locked and sealed by Goldblatt's employees. Throughout the day as goods are loaded, other goods are placed in the store runs. A trip sheet is made up for each load. See Exhibit 4. Thereafter, the goods are daily transported to all Goldblatt department stores. Orders not completely picked or packed by quitting time are left in that incompleted state in their respective stock departments until the next working day. Similarly, assembled goods are left in the store runs until the next working day. Trucks or trailers which are loaded and sealed, or partially loaded, or empty remain in the truck pit until the next working day.

23.

a. The defendant has a night watchman stationed at the 63rd Street Warehouse between 5 p. m. and 7 a. m., Monday through Friday, and 24 hours on Saturday, Sunday, and holidays. His post is at the watchman's office, adjacent to the front door of the warehouse, which is located about the center of the building on 63rd Street. After all Goldblatt's employees have been checked out, the warehouse superintendent and night watchman lock the front door. The door is equipped with a time lock and every opening is recorded on a tape. All openings must be authorized and must be explained in the Watchman's Log. No emergency opening may be made except as authorized by defendant. If an emergency arises, the authorization may be obtained by telephone.

81 The night watchman telephones Goldblatt's State Street Store hourly after his rounds. At 6 p. m. he takes the key clock and begins his hourly rounds of the key stations located as follows:

Station No.	Floor	Location
1	2d Floor	Near center of building.
2	1st "	Near northwest corner of building.
3	1st "	Near SW corner of building.
4	1st "	Near SE corner of building.
5	Basement	Boiler room entrance.
6	1st Floor	First cross aisle west of east wall on supporting post.
7	2d Floor	About 50 feet east of center of building.

These stations are so located as to require the night

watchmen to cover the entire 63rd Street Warehouse, guarding all goods in various stages of receipt, storage, and preparation for shipment; all trucks and trailers in the truck pit; and all doors, windows, skylights, ventilators, and other means of entry into the warehouse. The watchmen's hourly tour begins and ends at the guard's office.

On his tour of duty, the night watchman guards against damage by leaks, overflows in the plumbing, the roof, the skylights, and ventilators. On every round, during approximately eight months of the year, he checks the boiler which heats the whole building to see that the automatic water feed and the oil burner are in proper working condition and that there are no leaks. When railroad freight
82 cars are being spotted on the railroad siding adjacent to the east wall of the building, he sees to it that no member of the train crew or anyone else makes entry into the warehouse by climbing to the roof from the freight cars. On his tour of duty he also passes all departments and guards the goods in the warehouse which are being prepared for shipment. In the shipping department he observes the goods in the store runs in readiness for loading, and also observes the condition of the partially loaded trailers and trucks and any trailers and trucks which may be loaded and sealed. In case of fire this night watchman would call the City Fire Department. He would also utilize the fire extinguisher. Outgoing interstore mail is left at the night watchman's office each evening by a Goldblatt employee at the 63rd Street Warehouse, and picked up by the interstore mailman while the watchman is on duty. Incoming interstore mail is received by the watchman at approximately 6 a. m.

b. Defendant's night watchmen stationed at the 63rd Street Warehouse work the following schedule:

Shift	Sun.	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.
			1 Off Relief				
1	7 a.m. to 7 p.m.	5 p.m. to 12 M.	5 p.m. to 9 p.m.	5 p.m. to 12 M.	9 p.m. to 7:30 a.m. Fri.	5 p.m. to 12 M.	5 p.m. to 12 M.
					2 Off Relief		
2	7 p.m. to 7:30 a.m. Mon.	12 M. to 7:30 a.m. Tues.	9 p.m. to 7:30 a.m. Wed.	12 M. to 7:30 a.m. Thurs.	5 p.m. to 9 p.m. Thurs.	12 M. to 7 a.m. Sat.	12 M. to 7 a.m. Sun.

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83 Only one nightwatchman mans a particular station during a shift. For each station, there are two regular night watchmen or one or more relief night watchmen. All of defendant's night watchmen at the 63rd Street Warehouse are employed at a straight hourly rate of 90 cents and work approximately 50 hours per week; they do not receive additional compensation as overtime for hours worked in excess of 40 per week.

24.

Wabash Warehouse.

a. Goldblatt maintains a warehouse at 328 South Wabash Avenue, Chicago, Illinois, hereinafter called the "Wabash Warehouse." This warehouse is directly across the alley from Goldblatt's State Street Store which is located at 333 South State Street; this warehouse serves only the State Street Store.

b. The alley between the Wabash Warehouse and the State Street Store is a public alley carrying traffic one way from north to south between Jackson Boulevard and Van Buren Street. During the day there is a constant stream of trucks and trailers carrying intrastate and interstate traffic to and from the Wabash Warehouse.

c. In the rear of the Wabash Warehouse and opening onto the alley is a truck pit. Behind the truck pit in the said warehouse is a receiving and shipping platform with a capacity for handling the unloading and loading of eight trucks or trailers simultaneously.

84 d. Goods are warehoused throughout the eight floors of the Wabash Warehouse except the first and second floors. On the first floor are retail stores fronting on Wabash Avenue, which are rented by Goldblatt to independent retail enterprises. On the second floor are Goldblatt's State Street personnel offices and employees' recreation rooms.

25.

a. Approximately 22 per cent of the incoming goods received at the Wabash Warehouse is regularly and daily received in interstate commerce from points outside the State of Illinois. Merchandise having a sales value of over 18 million dollars was received at this Warehouse during each of the fiscal years ending January 31, 1950 and 1951. Approximately 2 per cent of the goods shipped from this

warehouse is regularly and daily shipped to Goldblatt's customers located out of the State of Illinois; the sales value of these shipments totaled approximately $180,000 during each of the fiscal years ending January 31, 1950 and 1951.

b. Goldblatt employs approximately 69 persons at the Wabash Warehouse in the receiving, unloading, checking, unpacking, marking, storing, repacking, wrapping, distributing, and shipping goods to Goldblatt's State Street Store customers.

26.

At the receiving and shipping platform of the Wabash Warehouse, described in paragraph 24(c) hereof, Goldblatt employees daily receive, unload, and check incoming
85 goods, 22 per cent of which goods is received in interstate commerce from points without the State of Illinois. The employees deposit these goods on the platform. Thereafter the goods are moved by Goldblatt employees either to marking rooms or to warehousing space in the Wabash Warehouse.

27.

a. The procedure followed at the Wabash Warehouse by Goldblatt employees in handling outgoing goods is as follows: When a sale of merchandise is made in the State Street Store, the sales clerk makes up a delivery slip showing the customer's name, address, and the goods sold. The goods are wrapped and a delivery slip is attached to the package. The package is then taken to the Wabash Warehouse shipping room. In the shipping room the package is checked and thereafter placed on a conveyor belt which takes it to the loading and shipping platform. At the shipping platform it is taken off the conveyor belt and loaded on to a Goldblatt truck or trailer. After the truck or trailer is fully loaded, it is taken to the west loading building of the Ashland Garage. Here the packages are sorted for delivery to Goldblatt customers, as described in paragraph 15(c) hereof.

b. Mail orders are regularly and daily received at the State Street Store. These orders total approximately $100,000 a year. Most of these mail ordere are received from customers without the State of Illinois. The procedure for filling mail orders is as follows: The goods are

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selected, wrapped, and labeled in the State Street Store.

The mail order goods are then taken to the ship-
86 ping room in the Wabash Warehouse where they are checked and the postage added. The order is then conveyed to the loading and shipping platform where it is loaded on to a Goldblatt truck or trailer and taken to the United States Post Office. Express shipments made at the request of the customer are handled in approximately the same manner except that the express company's truck calls for the shipments at the shipping platform.

28

a. The defendant employs a day guard at the Wabash Warehouse who is stationed at the receiving and shipping platform and in the alley between Jackson Boulevard and Van Buren Street. His duty is to guard against theft or any other damage to goods and vehicles either being received at or shipped from the Wabash Warehouse. This day guard is required to keep the alley clear of traffic. He directs incoming trucks and trailers, carrying both local and interstate goods, through the alley and into the truck pit. He also directs all outgoing trucks and trailers from the truck pit out of the alley. He is required to examine the seals on all incoming Goldblatt trailers. In the case of so-called "valuable" goods, such as furs, jewelry, hosiery, etc., received at the Wabash Warehouse, the day guard is required to watch the unloading of such goods, and is also required to make certain that they are received intact by the particular Goldblatt employee designated to receive said "valuable" goods. He also observes the incoming goods throughout the receiving, unloading, and checking process at the receiving platform in the Wa-

bash Warehouse. With regard to outgoing shipments
87 from the Wabash Warehouse, no trailer or truck is permitted to depart until the seals have been placed on the vehicles; it is the duty of the day guard to note the numbers of the trailers and authorize the departure of the trailers. The day guard also checks to see that all goods being shipped out of the warehouse are accompanied by either a trip sheet or door pass signed by an authorized Goldblatt employee; this includes express and parcel post shipments which are made daily in both intrastate and interstate commerce. He is also charged with the duty of preventing unauthorized persons from entering the Wa-

bash Warehouse through the receiving or shipping platform. This day guard is also required to guard the State Street Store, where he makes a complete round of the outside of the store, checking all doors, windows, and other possible means of entry from the outside to the store.

b. the day guard works 6 days a week, from 8 a. m. to 5:45 p. m., Monday through Saturday, with an hour for lunch, at the Wabash Warehouse, and from 6 a. m. to 8 a. m. at the State Street Store. He is paid a salary of $52.60 per week for the hours at the Wabash Warehouse, and $1 an hour or a total of $12 for the hours at the State Street Store. This day guard does not receive any additional compensation as overtime for hours worked in excess of 40 per week.

28½.

Defendant's employees employed at the Wentworth Warehouse, the Ashland Avenue Warehouse and Garage, the 63rd Street Warehouse, and the alley between the State Street Store and the Wabash Avenue Warehouse do not physically handle the goods received at or shipped from said warehouses, except insofar as they may handle stolen goods recovered by defendant's employees, as described in paragraphs 8(e), 17(e), and 31(d) hereof. The total amount of stolen goods recovered by defendant's employees is approximately $300.00 per year.

29.

Lexington Bakery.

a. Goldblatt operates a bakery at 2608 Lexington Street, Chicago, Illinois, hereinafter called the "Lex-
88 ington Bakery." Bakery goods of all description are produced for Goldblatt's retail stores, including the stores at Hammond and Gary, Indiana. The total sales value of bakery goods produced at the Lexington Bakery is in excess of $1,100,000 per year. Approximately 90 per cent of the raw materials and ingredients used in the production of the bakery goods is received in interstate commerce from sources outside the State of Illinois. Approximately 17 per cent of the bakery goods produced at the Lexington Bakery is regularly produced for interstate commerce and is daily shipped, delivered, and transported in interstate commerce from the said bakery to Goldblatt's

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stores in Hammond and Gary, Indiana. Goldblatt employees are engaged in the production of bakery goods 24 hours each day during the week, except during the period between 11 a. m., Saturday, and 6 a. m., Sunday.

b. Defendant employs a night watchman at the Lexington Bakery from 4:30 p. m. to 6:30 a. m., Sunday through Friday, and until 6:30 a. m. Saturday and from 11:30 a. m., Saturday, to 6 a. m., Sunday, and Sundays and holidays—24 hours. These night watchmen work in one-man shifts. The duty of the night watchman is to guard against fire, theft, or any other damage to the Lexington Bakery building or goods contained therein. The night watchman is required to patrol the entire premises constantly during his tour of duty. The night watchman makes regular hourly rounds, carrying a watchman's clock into which, at each of 13 stations, he inserts a key. The keys must be inserted in the lock in accordance with a regular order. The defendant's night watchman is also required to keep the front door of the Lexington Bakery locked and to
89 check Goldblatt employees in or out of this door. In the event of fire, he notifies the City Fire Department immediately. At the same time, he would also utilize the fire extinguisher. These activities and duties performed by defendant's night watchmen constitute the production of goods for commerce within the meaning of the Fair Labor Standards Act of 1938, as amended.

c. Until May 1, 1949, night watchmen employed at the Lexington Bakery worked in excess of 40 hours per week, and were compensated by defendant at a straight hourly rate of 85 cents and received no additional compensation as overtime for hours worked in excess of 40. Since May 2, 1949, these night watchmen were paid time and one-half their regular hourly rate of pay for all hours worked in excess of 40 per week.

30.

Martin Food Products, Inc.

a. Martin Food Products, Inc., a wholly-owned subsidiary of Goldblatt, was engaged in the production of food products, such as jams, jellies, and peanut butter, at 3641 South Iron Street, Chicago, Illinois, until October 1949, at which time the said Martin Food Products, Inc. ceased business. A substantial portion of the raw materials and ingredients used in the production of the food

products by the said Martin Food Products, Inc. was received in interstate commerce from sources outside the State of Illinois. A substantial portion of the goods produced by the said Martin Food Products, Inc.'s employees was regularly produced for interstate commerce and was daily shipped, delivered, and transported in interstate
90 commerce from the said Martin Food Products, Inc. to Goldblatt's retail stores in Indiana.

b. Defendant employed night watchmen at the said Martin Food Products, Inc. until July 30, 1949, when Martin Food Products, Inc. discontinued the services of the defendant. The duties of the night watchmen were to guard against fire, theft, and any other damage to the building of the Martin Food Products, Inc. or goods contained therein. The services rendered by the aforesaid night watchmen were similar in nature to those performed by defendant's night watchmen stationed at the Wentworth Warehouse and Ashland Warehouse and Garage, as described herein.

c. Until July 30, 1949, defendant's night watchmen employed at the Martin Food Products, Inc. establishment worked in excess of 40 hours per week and were paid at a straight hourly rate or straight weekly salary without receiving additional compensation as overtime for hours worked in excess of 40.

31.

Defendant's Central Office.

a. Defendant employs approximately 10 employees in its central office at 343 South Dearborn Street, Chicago, Illinois. These employees perform the administrative work in connection with defendant's business of furnishing watchmen, guard, detective, fire inspection, and
91 shopping service to Goldblatt. These central office employees hire, assign, and direct the work of all night watchmen, day guards, and detectives employed by defendant in all Goldblatt warehouses and stores. The central office employees maintain all the books and records in connection with defendant's business.

b. The defendant employs in the central office the following corporate officers and supervising employees: Edwin Boltz, president, supervises the administrative work in connection with furnishing of protection service to Goldblatt. Charles Regan, vice president, is chief super-

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visor of all detectives, guards, and watchmen; he also manages defendant's office in the Goldblatt State Street Store. Marcella Main, assistant secretary, is the office manager and is in charge of central office personnel, including a bookkeeper, statement clerk, and until April 1, 1951, a switchboard operator. Eugene Tomezak is supervisor of all day guards and detectives. Bernard C. Poehler is supervisor of all night watchmen. Russell Tomezak, chief shopper, is supervisor of shoppers.

c. The bookkeeper employed by defendant in this central office keeps the defendant's pay roll records, cash disbursement book, sales journal, cash receipts, general ledger, check book, and bank record book. She makes up the pay roll every week, balances the cash disbursements every week, and balances all other books every 4-week period. She prepares and submits weekly to Goldblatt detailed cash disbursement reports, billing Goldblatt for the
92 total detective, day guard, and night watchmen pay-roll, plus 3.6 per cent of the gross for Social Security and Unemployment Compensation contributions. She makes the Social Security, Unemployment Compensation, and Withholding Tax returns and pays them to the State of Illinois, the State of Indiana, and the Collector of Internal Revenue.

Each week the bookkeeper receives from each Goldblatt warehouse or store the records of hours worked daily and salary rate for all defendant's detectives, day guards, and night watchmen employed in the particular Goldblatt establishment. These time sheets are delivered by the bookkeeper to Mr. Eugene Tomezak or Mr. Poehler, who check over the time sheets and then enter on the said sheets the time for which the employee is to be paid. Thereafter, the bookkeeper makes up the pay checks. She normally distributes the pay checks by mailing them to the Goldblatt establishment where defendant's employees are stationed, including the Hammond and Gary (Indiana) Goldblatt stores. The bookkeeper maintains individual earnings records for all defendant's employees.

A true and correct copy of an employee's earnings record of defendant for the year 1949 is attached hereto, marked Exhibit 13, incorporated herein, and made a part hereof. True and correct copies of time sheets maintained for defendant's employees for the pay roll periods ending March 5 and 12, 1949, and December 9, 1950, are attached hereto, marked Exhibits 14-A, 14-B, 14-C, 14-D, 14-E, 14-F,

14-G, and 14-H, incorporated herein, and made a part hereof. These exhibits are time sheets for defendant's day
93 guards, night watchmen, and house detectives employed at the Wentworth Warehouse, the Ashland Warehouse and Garage, the 63rd Street Warehouse, the Hammond (Indiana) Department Store, and Gary (Indiana) Department Store, and time sheets for defendant's central office employees. The said Exhibits 13, 14-A, 14-B, 14-C, 14-D, 14-E, 14-F, 14-G, and 14-H constitute all of the employment records kept by defendant for its employees employed in the aforesaid places of business, and the said records are typical of records of hours worked and wages paid to said employees to the date hereof.

d. The statement clerk, employed by defendant in its central office, is engaged in receiving and recording information obtained from defendant's detectives and day guards stationed in all Goldblatt warehouses and stores with respect to arrests made by them. When a dishonest employee or shoplifter is arrested, the defendant's detective or day guard makes up a yellow card. See Exhibit 6 hereof. On this yellow card, he records information concerning the theft, the circumstances surrounding it, and a description of the person involved. The defendant's detective or day guard telephones this information to the statement clerk in defendant's central office. While he holds the telephone, the statement clerk checks defendant's records to see whether the record contains information with regard to the person arrested. She gives the detective or day guard whatever information is available. The detective or day guard in each of Goldblatt's establishments prepares and sends to the statement clerk a yellow card, Exhibit 6; a Voluntary Statement, Exhibit 7; a Release, Exhibit 8;
94 a Store Detective or Employee Statement, Exhibit 9; and a monthly statement of arrests, receipts of returned stolen goods, the statement clerk acknowledges receipt of these documents. If the arrest involves an employee of Goldblatt, the statement clerk prepares a do-not-hire card on a form, attached hereto, marked Exhibit 15, incorporated herein, and made a part hereof. It is her responsibility to deliver the do-not-hire cards almost daily to Goldblatt's State Street Store. Upon the receipt of the cards by Goldblatt, the information is made available to all Goldblatt stores. The statement clerk makes up index cards of information obtained from the detectives or day guards. Each month the statement clerk prepares and sub-

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mits a statement to Goldblatt's showing the arresting detective or day guard, persons arrested, goods taken, and goods returned.

e. Until April 1, 1951, the defendant employed a switchboard operator in the central office. The duties of the switchboard operator (since April 1, 1951, performed by the bookkeeper and statement clerk as herein below set forth) were as follows: She handled all incoming and outgoing telephone calls through defendant's switchboard in the central office. She handled all calls between the central office and defendant's employees stationed in all Goldblatt warehouses and stores. Calls to and from Goldblatt Indiana stores occur daily. In the event a Goldblatt trailer or truck left one of the Goldblatt warehouses or stores for another Goldblatt establishment too late to arrive before closing time, the switchboard operator received a call from defendant's employee stationed at the point of departure informing her of this fact. The switchboard operator thereupon telephoned to defendant's employee at the des-
95 tination point and notified him that a trailer would arrive late. In case any person was required to remain in or to enter a Goldblatt establishment after closing hours, the switchboard operator was advised to this effect by a Goldblatt executive. She then telephoned this information to defendant's employee at the Goldblatt establishment involved. She also noted the late opening in a record book kept at the switchboard. When a bad check was cashed in a Goldblatt store, defendant's detective telephoned the information to the switchboard operator, and she, in turn, telephoned the same information to defendant's detectives at all Goldblatt stores. The central office of the defendant has a direct telephone line to all Goldblatt stores and warehouses except the South Bend, Indiana store. Since April 1, 1951, the duties of the switchboard operator have been and are being performed by the bookkeeper on Monday, Wednesday, Thursday and Friday, and by the statement clerk on Tuesday, in addition to their other duties described in paragraphs 31 (c) and (d).

f. The defendant does not maintain a record of hours worked each workday and total hours worked each workweek for its bookkeeper, statement clerk, and switchboard operator employed in the central office. Prior to August 1, 1950, the said bookkeeper, statement clerk, and switchboard operator were compensated on the following basis:

They received a salary for a 5-day week of approximately 35 hours. Each girl worked every third Saturday 8¾ hours, for which she was paid a day's pay. No additional compensation as overtime was paid to the said bookkeeper, statement clerk, or switchboard operator for hours worked in excess of 40. Since August 1, 1950, the three office employees have worked approximately 35 hours per week.

96 g. Defendant employs a fire inspector who works out of the central office. His duties are to inspect all Goldblatt warehouses and stores to make certain that there is compliance with the rules and regulations of insurance association underwriters so that no insurance will be cancelled, and that there is compliance with the city fire ordinances. He inspects all Goldblatt warehouses and stores in Chicago once a week, and the three Indiana stores as well as the Joliet, Illinois store biweekly. At each Goldblatt establishment he inspects all fire extinguishers and sees that they are properly loaded. Twice a year he supervises fire drills at each Goldblatt establishment. He makes daily reports with respect to fire hazards discovered on his inspections and the measures taken to correct the fire hazards to Mrs. Marcella Main, the office manager.

The fire inspector is subject to call at all times. He normally works from 5 to 7 hours a day, 6 days a week, and is paid a weekly salary of $60. He does not receive any additional compensation as overtime for hours worked in excess of 40. The defendant does not maintain a record of the hours worked each workday and total hours worked each workweek by the fire inspector.

32.

Goldblatt carries insurance on the building and contents of the Wentworth Warehouse, the Ashland Warehouse

97 and Garage, the 63rd Street Warehouse, and the Lexington Bakery as follows:

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	Fire and Extended Coverage Insurance on Building	Fire and Extended Coverage Insurance on Contents of Building	Sprinkler Leakage Ins. on Building	Sprinkler Leakage Ins. on Contents of Building	Internal and External Hold-up Insurance
Wentworth Warehouse	$ 929,000	$3,000,000	Included in fire and extended coverage policies		$ 6,000—Int. 1,000—Ext.
Ashland Warehouse and Garage	1,910,000	1,750,000	"	"	50,000—Int. 1,500—Ext.
63rd Street Warehouse*	245,000	900,000	None	None	25,000—Int. 1,000—Ext.
Lexington Bakery	164,000	250,000	$20,750	$125,000	500—Int. 500—Ext.

* In addition, at the 63rd Street Warehouse there is open stock burglary insurance in the amount of $50,000 covering only the liquor stored in the vault.

It is the practice of fire insurance companies to graduate the rate charged for fire insurance in accordance with the degree of risk presented. As a general rule, the plant which maintains a night watchman making hourly rounds is accorded a lower insurance rate than an identical plant which maintains no such watchman. The maintenance of night watchmen making hourly rounds of key stations in the Wentworth Warehouse, the Ashland Warehouse and Garage, the 63rd Street Warehouse, and the Lexington Bakery has resulted in Goldblatt obtaining a lower insurance rate than would have been possible without the aforesaid night watchmen. At the Wentworth Warehouse the premium savings approximate 5 per cent, or $46.45, on the building, and 4 per cent, or $150.00, on the contents of the building. At the 63rd Street Warehouse the premium savings approximate 5 per cent, or $15.60, on the building, and 3 per cent, or $270.00, on the contents thereof. At the Lexington Bakery, the premium savings approximate 1.04 per cent, or $16.40, on the building, and 4/5 of 1 per cent, or $25.00, on the contents thereof. At the Ashland Warehouse and Garage the premium savings approximate 2 per cent, or $19.10, on the building, and 1 per cent, or $17.50, on the contents thereof. There are a number of other factors which affect Goldblatt's fire insurance premiums, including the location of buildings, the construction of buildings, the presence or absence of a sprinkler system, and the kind of merchandise offered.

98

33.

Goldblatt carries insurance on the transpo[illegible] of goods by its motor fleet consisting of 127 trucks and 70 trailers drawn by 17 tractors. The ability to obtain this insurance is affected by the security measures used by defendant's employees and Goldblatt employees. This is true with regard to the practice of sealing Goldblatt vehicles and keeping records of the seals, as described herein.

34.

While from time to time (1) Goldblatt warehouse and bakery operations have been carried on in different buildings, (2) departments have been changed from one warehouse to another, and (3) departments have been added, eliminated, expanded or reduced, the general character and function of the various departments and the general duties of Goldblatt employees in the departments have remained substantially the same continuously from 1938 to the date hereof.

35.

The duties of the defendant's employees and their relationship to the Goldblatt operations have remained substantially unchanged since 1938.

It is further stipulated and agreed that for the period from October 1, 1947, to the date hereof, the matters
99 set forth in this stipulation shall be accepted as true and correct, but each of the parties hereto reserves the right to challenge the admissibility of any statement contained in the stipulation on grounds of irrelevance or immateriality.

Dated: November 9, 1951.

William S. Tyson,
Solicitor,
Herman Grant,
Regional Attorney,
Richard W. Proctor,
Attorney,
Attorneys for Plaintiff, United States Department of Labor.

Stanford Clinton,
Jay A. Pritzker,
Attorneys for Defendant.

100 Endorsed: United States District Court. • • (Caption—49-C-1558) • • Stipulation. Filed Nov. 13, 1951. Roy H. Johnson, Clerk.

• • • • •

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108 And afterwards on, to wit, the 4th day of April, 1952, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Notice in words and figures following, to wit:

109 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

NOTICE.

To: Mr. William S. Tyson, Solicitor
Mr. Herman Grant, Regional Attorney
Mr. Richard W. Proctor, Attorney
Attorneys for Plaintiff,
United States Department of Labor
Merchandise Mart, Room 1200
Chicago 54, Illinois

Please Take Notice that on Friday, April 4, 1952, at 10:00 A. M., or as soon thereafter as counsel can be heard, we shall appear before the Honorable J. Samuel Perry, Judge of the United States District Court for the Northern District of Illinois, Eastern Division, in the courtroom usually occupied by him in the U. S. Court House, Chicago, Illinois, and then and there move as follows:

1. For leave to file the brief of the defendant instanter;
2. To have this matter set down for hearing for taking of additional testimony; and
3. To have this matter set down for oral argument; at which time and place you are requested to be present.

Stanford Clinton,
Jay A. Pritzker,
Attorneys for Defendant.

State of Illinois, } ss.
County of Cook. }

Daisy B. Cain, being first duly sworn, on oath deposes and says that she served the foregoing Notice upon the above-named Messrs. William S. Tyson, Herman Grant, and Richard W. Proctor, Attorneys for Plaintiff, by enclosing true copies thereof in envelopes, postage prepaid, addressed to them at Room 1200, Merchandise Mart, Chi-

cago 54, Illinois, and depositing same in the United States mail chute at 134 North La Salle Street, Chicago, Illinois, at the hour of 5:30 P. M., the 2nd day of April, 1952.

Daisy B. Cain.

Subscribed and sworn to before me this 2nd day of April, 1952.

Honora Harris,
Notary Public.

(Seal)

110 And on the same day, to wit, on the 4th day of April, 1952, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

111 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-1558) * *

On motion of the defendant by its counsel it is

Ordered that leave be and is hereby granted to the defendant to file brief instanter and that plaintiff's brief shall be filed by April 25, 1952, and also on motion of the defendant by its counsel it is

Ordered that this cause be and it is hereby set for hearing for taking of additional testimony on April 8, 1952, at 9:15 A. M.

112 And afterwards on, to wit, the 20th day of June, 1952, there was filed in the Clerk's office of said Court a certain Transcript Of Proceedings Had On April 11, 1952, Before The Honorable J. Sam Perry, Judge, in words and figures following, to wit:

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114 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-1558) * *

Transcript of proceedings had in the above-entitled case before Hon. J. Sam Perry, one of the Judges of said Court, in his court room in the United States Court House, Chicago, Illinois, Friday, April 11, 1952, 9:30 o'clock a. m.

Present:

Mr. Richard W. Proctor, appeared on behalf of plaintiff;

Mr. Stanford Clinton, appeared on behalf of defendant.

115 Mr. Clinton: If your Honor please, this is a suit involving alleged violations of the so-called Fair Labor Standards Act of 1933, as amended.

The parties have stipulated as to the great mass of facts involved, and your Honor gave us this time to introduce a little additional testimony.

We are ready, your Honor.

The Court: All right, you may proceed.

(Witnesses sworn.)

Mr. Clinton: To facilitate our understanding of the testimony, your Honor, the defendant is a company engaged in the furnishing of watch service and shopping service and detective service. Primarily it is the Goldblatt chain of stores and its warehouses.

Our testimony this morning has to do with the duties and compensation of a group of about four employees in the central offices of the company at 343 South Dearborn Street. That is what this witness will testify to.

116 MARCELLA MAIN, called as a witness herein on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Clinton.

Q. What is your name?
A. Marcella Main.
Q. Where do you live?
A. 2322 North Commonwealth.
Q. What is your business or occupation?

A. Secretary and office manager.
Q. For the Joyce Agency, Inc.?
A. Yes.
Q. I think you are also employed by another concern, Boltz & Boltz?
A. That is right.
Q. Where do you work?
A. 343 South Dearborn, Joyce Agency.
Q. As office manager what are your duties, the nature of your duties?
A. To supervise the work of the switchboard operator, the bookkeeper, general office.
Q. In the office of Joyce Agency, Inc.?
A. Yes.

117 Q. How many employees are there in the offices of Joyce Agency, Inc. at 343 South Dearborn?
Mr. Proctor: It is in the stipulation.
The Witness: About eight or ten.
Mr. Clinton: It has been changed.
Q. There is yourself, is that correct?
A. Yes.
Q. You are the office manager and secretary, is that right?
A. Yes.
Q. There is the secretary to Mr. Boltz?
A. Yes.
Q. Who is that?
A. Margaret Fitzgerald.
Q. Then there is a switchboard operator?
A. Yes.
Q. What is her name?
A. Genevieve Christ.
Q. Then there is a bookkeeper, is that right?
A. Yes.
Q. Her name?
A. Florence Pridmore.
Q. With respect to the girls, all of the girls that work in the office at Joyce Agency, Inc., what is their work

118 week?
A. 35 hours.
Q. And when do they come to work?
A. We have a staggered office routine, nine to five, nine-thirty to five-thirty; quarter to ten to quarter to six.
Q. Will you separate the employees, please?
The Court: Do you mean they are staggered?

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The Witness: Yes.

The switchboard operator opens the office at nine, leaves at five. The bookkeeper, nine-thirty to five-thirty. The two secretaries come in at a quarter of ten and leave a quarter to six.

By Mr. Clinton:

Q. How long has it been, Mrs. Main, that the girl employees in that office have worked a work week of 35 hours?

A. At least for the past two years.

Q. On Saturday is the office open?

A. Yes, sir.

Q. Who works in the office on Saturday?

A. None of the girls in the office.

Q. A special girl?

A. Yes.

Q. A separate girl from any of the other four of
119 you, is that right?

A. Yes, sir.

Q. Prior to two years ago when the girls were put on the 35-hour week, what was their work week?

A. They have always been on a 35-hour week for the past ten years.

Q. But you handle the Saturday a little differently?

A. Yes, that is right. When we had four girls in the office one of them would work each Saturday. They would take turns to work a Saturday.

Q. And for how long would they work on Saturday?

A. From nine in the morning until six.

Q. So that every fourth week one girl would work 44 hours, is that correct?

A. Yes, sir.

Q. That was two years ago. But since the last two years they have been working the 35-hour week, is that right?

A. Yes, sir.

Q. Now, you are the office manager of the office?

A. Yes, sir.

Q. And your compensation is how much?

A. $65.00 a week.

Q. From Joyce Agency?

120 A. Yes.

Q. And you have compensation from another concern?

A. Yes.
Q. For those same hours?
A. Yes.
Q. How much is that?
A. Oh, on a weekly salary, $10.00 a week.
The Court: This other company pays $10.00?
The Witness: Yes.
The Court: In addition to what you get there?
The Witness: Yes, sir.

By Mr. Clinton:

Q. But all your work is performed within a span of a 35-hour week?
A. Yes.
The Court: What other company?
Mr. Clinton: It is Boltz & Boltz.
Q. Is that the name of it?
A. Yes.
Q. And they have offices there with you, is that correct?
A. Yes.
The Court: Do they pay Social Security and all of that?
121 The Witness: Yes, sir.
The Court: On your work?
The Witness: Yes.
The Court: So that you are a regular employee of theirs?
The Witness: Yes, sir.

By Mr. Clinton:

Q. Mrs. Main, in connection with the use of the switchboard in the offices of the Joyce Agency, are there ever calls placed through the switchboard to the so-called Indiana stores of Goldblatt Brothers?
A. Yes, sir.
Q. And those Indiana stores are located at Hammond, at Gary and at South Bend, is that correct?
A. Yes, sir.
Q. Let us assume that a call is either incoming or outgoing from the Indiana stores of Goldblatt, will you please explain to Judge Perry how that call is handled?
A. Whoever is making the call picks up the phone and the switchboard operator gives him a direct line to the Gary or Hammond store, we have a direct line through-

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out the Goldblatt stores, and she plugs that line in and they make the call direct.

122 Q. In other words, if you, for example, wanted to call the Hammond store you would pick up your phone and ask the State Street store—is that what you do?

A. Yes.

Q. The State Street store of Goldblatts?

A. Yes.

Q. When the State Street store of Goldblatt operator answers, you would ask for Hammond, is that right?

A. Yes.

Q. And the State Street store operator would plug the store in, is that correct?

A. Yes.

Q. Can you tell us how frequently calls are placed in Indiana in the overall operation of Joyce?

Mr. Proctor: I will object to that question and that line of questioning unless you first qualify the witness.

Mr. Clinton: She is the office manager.

Mr. Proctor: That does not show any knowledge of how many calls go through the telephone switchboard.

The Court: He means through her own telephone.

123 Mr. Proctor: Through her own telephone, I have no objection, if you limit it that way.

The Court: I understand you are talking about through her own telephone.

Mr. Clinton: No, I meant through the entire switchboard. I understand this lady is the supervisor.

The Court: Do you mean the entire switchboard of Joyce?

Mr. Clinton: Of Joyce.

The Court: That is what he is thinking, that you are talking about the entire switchboard of Goldblatt. But if she is talking about her own Joyce switchboard, he is satisfied.

Mr. Proctor: No, no. Even the Joyce switchboard, I don't see any qualification or foundation for that particular question.

The Court: She is the manager.

Mr. Proctor: She is the manager of the office.

The Court: Yes.

Mr. Clinton: The supervisor.

Mr. Proctor: How would she know what calls go

124 through the board?

By Mr. Clinton:

Q. What authority if any do you have over the switchboard operator?

A. Supervisory capacity.

Q. Do you employ her?

A. Yes.

Q. Do you fix her compensation?

A. To some extent, yes.

Q. And do you direct her in the performance of her duties?

A. Yes, sir.

Q. Are you familiar with the nature of her duties?

A. Yes, sir.

Q. Are you familiar with the operation of that board?

A. Yes.

Q. Have you yourself sat at the board?

A. Yes, sir.

Mr. Proctor: I still object to the question as to the number of calls, the method of handling it—

The Court: So as to clarify it, I will ask her this: Do you know the proportion of calls that are purely local
125 as compared to those that would go through Hammond and Indiana? Do you know an approximate percentage of calls that would be local as compared to the calls that would go to Indiana through your switchboard?

The Witness: Yes, your Honor.

The Court: All right. Is it within your knowledge?

The Witness: Yes.

The Court: I think that is sufficient. She may answer.

Mr. Proctor: I think she ought to tell how she knows that.

The Court: I am satisfied that she is in charge of it, she has sat at the switchboard. It is a comparatively small arrangement, and so on. That would be sufficient, I believe. She may answer.

By Mr. Clinton:

Q. What percentage of calls go through that board, would you say?

A. On what would I base the percentage?

Q. How much time a day would you say the operator at that board devotes on the average to Indiana calls,
126 either incoming or outgoing, through the State Street store, or approximately?

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A. I would approximate about a half hour a week in a 35-hour week.

Q. Are there ever any other occasions when there are calls that are not made that either come in or go out to Indiana without going through the State Street store?

A. Yes. If it is necessary for us to get in touch with the store immediately and the line is busy we might get it through State Street.

Q. Did you at my request investigate the number of such calls since the first of the year?

A. Yes.

Q. How many were there?

A. Three.

Mr. Proctor: I am going to object to that because I assume—I do not object to your question as to her making an examination, but I do object to the questions that will follow that, and I want to get my objection in.

Mr. Clinton: You are objecting to the question I have not asked yet?

127 Mr. Proctor: I want to object to that line of questioning because I assume that when she made this investigation she had some records or something. If she had some records the records would be the best evidence of the number of calls that went that way, and not her testimony from an examination she made.

The Court: I think the record there of course may possibly be the best evidence, but on the other hand it would be quite cumbersome to bring in all of the records back to the first of the year when actually the purpose of this is merely laying a foundation for other questions.

I think that may stand.

By Mr. Clinton:

Q. What records did you look at to determine the number of calls?

A. The telephone bill.

Q. You say there were three such calls?

A. From the first of the year.

Q. Mrs. Main, you say about a half hour a week the girl at the board will handle incoming or outgoing
128 calls. Is there one girl at that board or is she relieved from time to time?

A. She is relieved.

Q. By whom is she relieved?

A. By Miss Pridmore, and occasionally by Miss Fitzgerald, and occasionally by me.

Q. Does Miss Fitzgerald have anything to do with the Indiana stores at all?

A. No.

Q. She is just a secretary to Mr. Boltz?

A. Yes, sir.

Q. Is there any set pattern as to what time of the day or what day of the week the Indiana calls will come, or does that depend upon the circumstances of business as they develop?

A. It depends on the circumstances of business.

Q. So it is impossible to tell, I gather, which girl might be sitting at the board when the Indiana call comes through, is that correct?

A. Yes.

Q. With respect to your bookkeeper, Mrs. Main, what is her name again?

A. Florence Pridmore.

Q. And she prepares, does she not—she makes the 129 book entries on salaries and prepares checks, and so on?

A. Yes.

Q. Does she prepare the checks and keep the wage and salary records of the Joyce employes in Indiana?

A. Yes, sir.

Q. Do you know how many of them there are?

A. At the present time four.

Q. Will you explain to Judge Perry where she gets the information as to the salaries of those men, and describe the process that she goes through in transmitting their compensation to them?

A. The store detective in charge sends in—

Q. Who is that, the store detective?

A. Mr. Pollard perhaps would know.

Q. Mr. Pollard gives the bookkeeper—

A. No. I thought perhaps he might know.

Mr. Proctor: Just a minute. If the Court please, there is in my opinion an adequate description of the process that is gone through in the stipulation. This is completely describing the operation of how these things are prepared and sent in.

The Court: For the purpose of helping the court 130 get this—

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Mr. Proctor: There is not any objection to it except—

The Court: I think she may answer so that I may be able to understand this evidence.

By Mr. Clinton:

Q. Proceed.

A. Mr. Willard and Mr. Schaetzel are the store detectives.

Q. The store detectives in charge of which stores?

A. Gary and Hammond.

Q. Is there a store detective in charge at South Bend?

A. No, sir.

Q. The store detectives in charge at Hammond and Gary do what?

A. Prepare a worksheet which they send to the office through the mail every day, every week, once a week.

Q. And who receives that?

A. The bookkeeper receives it.

Q. In the mail?

A. Yes. And Mr. Tomczak, in charge of store detectives checks those records. He checks to see that the computation is correct, and then he turns that over to the
131 bookkeeper. She makes up the payroll check from that paper. When she is finished with that she puts the check in the mail and sends it out through the mail.

Q. How much mailing does she do per week?

Mr. Proctor: I object to that.

Mr. Clinton: There are four checks.

Mr. Proctor: I object to the question unless you limit it to how much mailing she does in connection with this particular matter.

Mr. Clinton: That is what I am talking about.

The Court: It is so understood.

By Mr. Clinton:

Q. Do you understand?

A. Yes.

Q. In connection with the checks payable to the men working in the Indiana stores how many mailings if any does she make a week?

A. Two.

Q. What are they?

A. These two checks, she sends one to Hammond and

one to Gary. That is, two envelopes, and in each envelope are the checks for the people that work in the store.

132 Q. Once a week she drops two letters in a mail chute?

A. Yes.

Q. Containing the checks for the two detectives in each of those stores?

A. Yes, sir.

Q. That is all she does?

A. Yes.

Q. Are you familiar with the amount of time that she spends in receiving this information and making the necessary entries and writing the checks?

A. On these four people?

Q. Yes, on these four people, weekly.

A. I should judge not more than a half hour a week it would take for that.

Mr. Clinton: That is all.

Cross-Examination by Mr. Proctor.

Q. Mrs. Main, you are the secretary of Joyce Agency, Inc., the corporation?

A. Assistant secretary.

Q. You are assistant secretary. You are a cor-
133 porate officer, is that correct?

A. Yes.

Q. Who is the president of the corporation?

A. Edwin G. Boltz, Sr.

Q. Is Edwin G. Boltz one of the persons you were talking about as Boltz & Boltz that are operating some kind of a business?

A. Yes.

Q. In your office?

A. Yes, sir.

Q. What is the business that Edwin G. Boltz operates, or Boltz & Boltz?

A. Labor relations.

Q. Do they handle labor relations for Goldblatt?

A. Yes, sir.

Q. Do they handle labor relations for anybody else?

A. Yes, sir.

Q. How many customers does Joyce Agency have besides Goldblatt at the present time, do you know?

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A. One other, I believe, at the present time.
Q. Yes. How many employees are employed in that place?
A. One store detective and probably one or two watchmen.
134 Q. How many establishments does Goldblatt have where you employ detectives or watchmen?
A. Fourteen, fifteen, sixteen.
Q. How many employees does Joyce have altogether?
A. At the present time we have a payroll of 85 people.
Q. You testified that there were how many employees employed in the office?
A. Eight, ten.
Q. Eight or ten employees?
A. Yes.
Q. Do you include in those employees the shopping crew?
A. Not as individuals, no, I haven't.
Q. Joyce does employ a shopping crew?
A. Yes, sir.
Q. And this shopping crew does show the stores in South Bend, Hammond and Gary?
A. Yes, sir.
Q. How many employees are in that shopping crew?
A. The supervisor and three employees at the present time.
Q. Have there been more employees in the past?
A. Yes, we have had five, and in peak seasons six.
135 Q. Where is the office of that shopping crew?
A. 343 South Dearborn, Joyce Agency.
Q. So when you testified about there being eight employees there you weren't thinking about the shopping crew as being part of the employees in that office?
A. No, I don't include them, no.
Q. Did you include both Mr. Boltz?
A. Yes, sir.
Q. And the fire inspector or fire chief, Mr. Whalen.
A. Mr. Whalen died some time ago. He is no longer there.
Q. Do you have a fire inspector now?
A. Yes.
Q. Who is that?
A. Mr. Poehler.
Q. The gentleman sitting over here?

A. Yes.

Q. Mr. Poehler was at the time we made the inspection here and up to the time he took over from Mr. Willett the chief of night watchmen, wasn't he?

A. Yes, sir.

Q. How many times have you relieved at the switchboard since the first of the year, we will say, up to the first of April? Let's say the first three months of the 136 year.

A. Perhaps five hours since the first of the year, total.

Q. And how would you say that was, relief at lunch times and things of that character?

A. No, I am thinking especially about a few days when the switchboard operator was home ill and we all had to help out.

Q. Mrs. Main, where do you do your work, most of your work?

A. 343 South Dearborn.

Q. Yes, but I mean at 343 South Dearborn, you have an office of your own, do you not?

A. Yes.

Q. Where is that office located with respect to the rest of the office?

A. Next to Mr. Boltz, Leonard Boltz' office. Just as one walks in from the reception room.

Q. It is in the eastern end of the office, isn't it?

A. Yes.

Q. And where is the switchboard located?

A. More in the western end, west.

Q. Would you say there was as much as forty feet 137 between your office and the switchboard?

A. Twenty feet, I would say.

Q. Can you see the switchboard from your chair and your desk?

A. No, sir.

Q. And the girl you designated as the switchboard operator, is she also sometimes designated as statement clerk?

A. Yes, sir.

Q. And she is performing her statement clerk duties as well as the switchboard operator's duties, is that right?

A. Yes, sir.

Q. All of these people you have said were in the office have occasion to make long distance calls, do they not?

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A. Yes, sir.

Q. Calls that are other than calls to Hammond and Gary, there might be calls to Detroit or New York or St. Louis?

A. Yes, sir.

Q. Or Indianapolis?

A. Yes.

Q. Those calls would be reflected on your telephone
138 bills, would they not?

A. Yes, sir.

Q. You did not bring those telephone bills with you?

A. No, I did not.

Q. Do you know offhand from your checking of those telephone bills what the amounts of your tolls are from month to month? What would an average month be for your toll bills?

A. I don't know.

Q. But you do know that there were only three calls to Hammond or Gary?

A. Yes.

Q. Since the first of the year?

A. Yes, sir.

The Court: As I understand it, those three calls were only at times when there was great emergency, because naturally they wouldn't pay a toll when they can get—

Mr. Proctor: When they have a straight line.

The Court: So I wouldn't attach too much significance to that.

Mr. Proctor: Except—

139 The Court: I mean I myself—

Mr. Proctor: Except that patently they make other long distance calls through the Bell service that they receive bills for. If we had the bills we would know what the size of that is.

The Court: Oh yes. What I meant was that so far as the ratio of the business was concerned, I think that is of very little help—the fact that there were, say, one, two or three calls, it just follows without saying anything more that if they get the calls free they would only use that way in the rarest of emergencies.

So the testimony concerning the proportion of time that is used on the direct wire has much more bearing than that.

By Mr. Proctor:

Q. I show you Exhibit G attached to the stipulation, 140 and an exhibit in this case by virtue of the stipulation, and ask you to look at it and tell me what it is.

Mr. Clinton: I will stipulate to it being what it is.

Mr. Proctor: I want her to look at it.

The Witness: That is a time sheet.

By Mr. Proctor:

Q. For what?

A. For watchmen's service, Mr. Schaetzel, for salary.

Q. For what location?

A. The Hammond store.

Q. The Hammond store?

A. Hammond, Indiana.

Q. How many employees are indicated on that time sheet?

A. Six.

Q. So that at the time that time sheet went in there were six Joyce employees employed in the Hammond store?

A. Yes, sir.

Q. Will you now look at Exhibit 14-H and tell me what that is?

A. A time sheet from Gary, Indiana.

Q. And will you tell me how many employees were 141 employed at the time of that time sheet?

A. Five.

Q. Five of them?

A. Yes.

Q. Were there more or less employees employed by Joyce Agency the first week in March, 1949 than there are now, over all?

A. Than at the present time, yes. At the present time we have only four employees in Indiana.

Q. I didn't ask you that. I asked you whether Joyce employed more employees in March, the first week in March, 1949, than they employ at the present time.

A. Yes.

Q. Over all. Did you have more than 85 employees, or don't you know?

A. In March, 1949? I thought you were referring to Hammond, Indiana.

Q. I am not referring to Hammond or Gary. I am referring to all the employees you had.

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A. I don't know offhand.

Q. Did you ever employ as many as a hundred employees?

A. Yes, sir.

Q. That is, at times?

A. Yes.

142 Q. That is usually when, during a Christmas rush?

A. During Christmas season, yes.

Q. As a matter of fact, you wouldn't know, you would have no way of knowing, would you, how many calls went to Hammond or Gary and any place else during your ordinary day? You are sitting at your desk and calls go through the switchboard and you can't see the switchboard and you can't see the operator working, can you?

A. No, sir.

Q. So that you would have no means of knowing how many calls go through that board?

A. Not just sitting at my desk, no, sir.

Q. Do you keep records of those calls, the calls through the straight line?

A. No, not a written record.

Q. There is no record kept of those calls?

A. No, sir.

Q. So you couldn't have checked any record to determine that there were two or three calls a day, or a half hour of calls a week, could you?

A. No written record, no.

Q. As a matter of fact, the statement clerk makes calls to these various stores, doesn't she, or they make calls

143 to her?

A. Yes, sir.

Q. What is the nature of those calls?

A. That she would make individually?

Q. That she would make or receive as a statement clerk.

A. If we would get a call that bad checks are being passed then she would have occasion to call Gary or Hammond and give that information to our store detective there.

Q. As a matter of fact, it is routine for her to call all the stores and give that information, is it not?

A. Yes, sir.

Q. If a bad check is passed in any of the fourteen or fifteen Goldblatt stores, whichever it is that has that information, it comes to the statement clerk, is that correct?

A. Yes, sir.

Q. If a bad check were passed in Hammond or Gary—how about South Bend?

A. Yes, sir. Not so likely, probably.

Q. It is not so likely a bad check would be passed there, either, is it?

144 A. (No response.)

Q. But if it were, that information would be called to the statement clerk?

A. Yes, sir.

Q. And what would the statement clerk do?

A. She would call the other stores in the chain and notify them what to do.

Q. So every time a bad check is passed in Goldblatts, any of Goldblatt—what is it, fifteen stores?

A. Yes, sir.

Q. The statement clerk makes a call to Hammond and a call to Gary, is that true?

A. Yes, sir.

Q. She gets a call from Hammond or Gary if there is an arrest made out there, doesn't she?

A. Yes, sir.

Q. And what happens then?

A. She takes the information, which is a description of the person involved in the theft.

Q. And she keeps a record of that information, doesn't she?

A. Yes, sir.

Q. And she also gives that information that she may have, if there is a record of that person, she gives a

145 record of that information to the detective in the Hammond or Gary store?

A. Yes.

Q. Or the Chicago store, as far as that goes?

A. Yes, sir.

Q. If that is how it happens.

A. Yes.

Q. Calls are made to Hammond and Gary to arrange for a special opening or a late opening?

A. Yes, sir.

Q. So every time somebody has to stay late in Hammond or Gary a call goes through your board so that that person can get out of the store, is that right?

A. Yes, sir.

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Q. Does the fire inspector, Mr. Whalan in the past and Mr. Poehler now, have occasion to use the telephone?

A. In relation to fire inspection?

Q. In relation to anything. Do they have occasion to use the telephone?

A. Yes, sir.

Q. If they had a call to go to Hammond or Gary or South Bend, that call would go through that switchboard, would it not?

A. Yes, sir.

146 Q. That is also true of Mr. Boltz, if Mr. Boltz has to make a call to Hammond or Gary that will go through either Mr. Boltz'—

A. Yes.

Q. If you have a call to make it will go through?

A. Yes.

Q. Do you have occasion to make a call once in a while?

A. Once in a while.

Q. And receive it?

A. Once in a while.

Q. If the bookkeeper has to make a call it goes through, is that right?

A. Yes, sir.

Q. According to Exhibits 14-G and 14-H, there were watchmen out there at Hammond and Gary?

A. Yes, sir.

Q. They carry some kind of a clock that has a disk in it that records their records, do they?

A. Yes.

Q. Who checks on those disks?

A. I don't know.

Q. I see. Do the disks come in to the office, in to your office?

147 A. No, sir.

Q. You don't check on them?

A. No.

Q. Did you ever hear of the do-not-hire card?

A. Yes.

Q. What is a do-not-hire card?

A. That is a card sent from our office on a dishonest employee, so that the card is sent to the State Street store, giving a description and an accounting of what has happened. They in turn send these cards from the State Street store to all their stores, do not rehire this person again.

Q. And those cards go out to Hammond and Gary?
A. Yes, sir.
Q. Every time a dishonest employee is detected any place in the Goldblatt system one of those do-not-hire cards is made out?
A. Yes, sir.
Q. Who makes that card out?
A. The girl at the switchboard.
Q. The statement clerk?
A. Yes, sir.
Q. And she takes those cards over to Goldblatt every day or so?
148 A. They are sent every day. Either she takes them or somebody from State Street picks them up.
The Court: Counsel, we are going into a lot that is not cross-examination, and I don't know what that has to do with it, what she does at the State Street store.
Mr. Proctor: I think probably that is correct. I think that is all.

Redirect Examination by Mr. Clinton.

Q. Mrs. Main, just a couple of questions. What is a shopper?
A. A shopper is a person who goes to a store with supervisor, makes a purchase and detects the cashier, to see that the money is put in the cash register and is rung up.
Q. And is it also the duty of a shopper to determine and to evaluate the performance of the sales clerk?
Mr. Proctor: I object to what the duty of the shopper is.

By Mr. Clinton:

Q. Anyway, she makes retail purchases, is that correct?
149 A. Yes, sir.
Q. The statements that the switchboard operator sends out, what are those?
A. The statements she receives, that is a description and a confession from the person who has been picked up as a shoplifter.
Q. At the retail stores of Goldblatt Brothers?
A. Yes.
Mr. Clinton: That is all.
(Witness excused.)

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BERN POEHLER, called as a witness herein on behalf of the defendant, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Clinton.

Q. What is your name, sir?
A. Bern Poehler.
Q. By whom are you employed?
A. Joyce Agency.
Q. What is the nature of your duties?
A. I have multiple duties. I have supervision of the watchmen, and I have a guard service, and supply-
150 ing the supplies. I mean, for instance, clock service. That is, dial service, the time clocks for the service. I also have fire supervision on a 24-hour basis, and subject to call at any time.
Q. You say you supervise the watch service. By watch service you mean men doing what and where?
A. Speaking at the present moment?
Q. Yes.
A. At the present moment we have only watch service for Goldblatt at five locations. They are the Ashland furniture warehouse, the Ashland Avenue garage, the Wentworth warehouse, the bakery on Lexington, and the commissary on East 63rd Street.
The Court: Is that all in the City of Chicago?
The Witness: All in the City of Chicago.
We supply and direct watch service in these five cases.

By Mr. Clinton:

Q. What do the men do when you say watch?
A. They patrol the building at regular intervals, and where they do not have A.D.T. service, just clock service, they call in our central office downtown at State Street during the night, patrol the doors and see to it that
151 the time lock is not opened unless at specified schedules.
Q. They are watchmen?
A. Correct.
Q. How many men are there that you supervise doing work—
Mr. Proctor: I am going to object to this line because we set up in the stipulation in great detail the system

they employed, so many men at this place doing so an so. Now we have Mr. Clinton trying to vary—

Mr. Clinton: Oh no.

Mr. Proctor: —the stipulation. I do not object if i is a matter of clarifying to the court the way this is per formed. I think it is amply set out in the stipulation, bu I do not think we ought to be going into matters of hov many men are employed at this place or that place, be cause the stipulation specifically states how many employ ees are employed at each of these places, and it specifically states what they do in detail.

The Court: The point with me is, isn't this complain lodged as of a particular date? What is the impor
152 tance of setting out the present situation?

Mr. Clinton: Here is what has happened, your Honor. There has been a considerable change in opera tions from time to time. There has been a redistribution of duties. Some employees have died. In any event, and I am assuming for the moment, I am making a very brash assumption, that the court is called upon to frame an injunction, in which event the court would have to have before it the actual facts of operation as of the time of trial.

The stipulation took about eighteen months to prepare, and things have changed and varied. The number of men is a very minor detail. I just want to show what this man presently does, that is all.

The Court: For that purpose I think I will overrule the objection.

All right, proceed.

By Mr. Clinton:

Q. How many men are there in those five operations that you—

A. I would say between ten and twelve.

153 Q. And they are directly employees of Joyce?

A. Yes.

Q. Do you have supervisory duties with reference to any other watchmen at any other locations?

A. Yes.

Q. Where are they?

A. They are in all the Goldblatt retail stores.

Q. In Indiana and in Illinois?

A. Yes.

Q. Who are their employers?

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A. Goldblatt Brothers, Inc.
Q. Do you supervise them?
A. Yes.
Q. When you say you supervise them, will you tell the court what you mean by that?
A. Well, I check them periodically during the night or even in the daytime if it is Sunday or a holiday, and the local detective on the scene generally checks the dial and advises me the following morning if any discrepancies had occurred during the night, and if I am out there in person I check the dials also.
Q. Do you have power to hire and fire men?
A. Not in the Goldblatt stores. I have in this respect, that if a man is intoxicated or he becomes ill I can
154 replace him on the scene.
Q. Right at the moment?
A. Yes, sir.
Q. Do you have power to hire and fire the employees in the other locations?
A. In the five locations that we employ direct.
Q. Can you make recommendations as to hiring and firing of employees of Goldblatt?
A. Yes.
Q. Is that given any weight?
A. Yes.
Q. What happens when you make such a recommendation?
A. It generally is taken care of at the very earliest opportunity. They must have a man to replace him before I can demand to have him fired.
Q. If you make a recommendation, what is done about it?
A. It is taken care of.
Q. Do you mean the man is discharged?
A. Yes, within a reasonable time.
Q. How much of your time do you put in in handling and supervising watchmen?
A. Do you mean the entire chain?
Q. Yes.
155 A. I would say between 65 and 70 per cent.
Q. What do you do with the balance of your time?
A. The balance of the time is fire inspection.
Q. Fire inspection?
A. Yes.

Q. How long have you handled that?
A. Since the 27th of December, 1951.
Q. Will you explain to the court what you mean by fire inspection service?
Mr. Proctor: That again has been gone over.
Mr. Clinton: It is different now.
Mr. Proctor: If it is different, then let us have it agreed that what he is doing is not what the fire inspector was doing at the time we drafted the stipulation.
The Court: It would follow that is true.
The Witness: Your Honor, semi-annually we make an inspection in company with the Cook County Inspection Bureau, which is the official body of the insurance agencies, and I accompany them semi-annually through the entire chain, and at that time we describe the failures, in other words, in equipment or sprinkler systems that are 156 inadequate or improperly functioning, and we also make recommendations where additional sprinkler equipment is required or fire doors are required.
I have studied fire protection—

By Mr. Clinton:

Q. You take care of the fire inspection with the fire inspection officials?
A. Yes.
Q. And also make preliminary inspections?
A. Before the fire inspection and periodically throughout the year.
Q. Do you go throughout all the units?
A. Yes.
Q. Do you do this work in the retail stores?
A. Yes.
Q. What percentage of the time you put in on fire inspection work do you put in in inspecting or arranging for inspection by outside officials of the retail stores themselves, both in Indiana and in Illinois?
A. I don't follow your question.
Q. You say you take care of fire inspection work throughout the chain.
A. Yes.
Q. You fire inspect the warehouse properties and 157 garages?
A. Yes.
Q. And the retail stores?

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A. Yes.

Q. How much of the time that you put in on fire inspection is devoted to the stores as distinguished from fire inspection on the warehouse properties?

A. I would say 70 percent.

Q. So that 70 percent of the 35 percent of your time you put in on fire inspection is in the retail stores where the retail selling is going on?

A. Yes.

Q. What is your compensation?

A. $85.00 a week on straight six days a week salary, and $20.00 expense account.

Q. Prior to the time that you took over that fire inspection work who handled it?

A. Mr. Whalen was the most recent.

Q. And he died in June, 1951?

A. Yes.

Q. Was there any replacement for him during that period of time?

A. Between July 1 and December 27, to the best of my knowledge, there was none.

158 Q. Prior to that time he had been ill a good many months, is that correct?

The Court: Why do you need to go into all of that?

Mr. Proctor: I object to that.

The Witness: He had been ill.

By Mr. Clinton:

Q. He had handled that line of work previously?

A. Yes, sir.

Q. And as of the present time the arrangement is that you are handling it together with your other duties, is that right?

A. Yes.

Q. Let me clarify one other thing, and I will be finished.

You work out of the State Street store?

A. No, sir, I work out of 343 South Dearborn.

Q. But you are an ambulatory employee?

A. Correct.

Q. You go around the chain all the time?

A. Yes.

Q. But you office in the central office?

A. 343.

Q. That is your headquarters?

159 A. Yes.

Q. That is where you get the calls?

A. Yes, except at night and holidays.

Q. Suppose you want to make a call to Hammond or Gary or one of the stores. Does a switchboard operator make it for you?

A. Yes.

Q. Do you dial it?

A. She procures a State Street line for me and generally procures the particular store that I want.

Mr. Clinton: That is all.

Cross-Examination by Mr. Proctor.

Q. Mr. Poehler, you referred to the fire inspection as being the semi-annual inspection?

A. By Cook County.

Q. By Cook County?

A. Yes, sir.

Q. How many of those inspections have you made?

A. I have made three to the present time.

Q. When were they?

A. I made one yesterday, and I made the other March 10, 1952.

160 Q. You say these inspections were semi-annual inspections?

A. Yes, semi-annually.

Q. And you made one yesterday?

A. Yes.

Q. That was April 10, and you made one March 10?

A. That is correct.

Q. A month ago?

A. Pardon me. The inspection yesterday was made at Milwaukee and Diversey, known as our Kimball Avenue store. March 10th it was at Lincoln and Belmont, and Broadway and Lawrence.

The Court: Counsel, it is clear to me. Semi-annually for each establishment.

The Witness: Correct.

The Court: And he made one at one establishment yesterday, and he makes two each year.

The Witness: Yes.

The Court: I understand it.

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By Mr. Proctor:

Q. You did not make any inspection of that kind prior to December, 1951?

A. None officially or unofficially, because I wasn't in office.

161 Q. Those inspections are made in the daytime?

A. The official ones are. The others may be and may not be. The official ones are made in the daytime.

Q. If an official one is made at night what happens?

A. There is no official made at night to my knowledge.

The Court: What has that to do with the question of interstate commerce?

Mr. Proctor: I don't know, your Honor.

The Court: The time he is devoting in Cook County, and what his duties are is not important. It is what he is doing out of Cook County, in Indiana or Michigan or anywhere else, that is important here.

By Mr. Proctor:

Q. Did Mr. Whalen go on these semi-annual inspections prior to when, June of 1951?

A. Yes, to the best of my knowledge. I would not know Mr. Whalen's duties because I would have no occasion to. I may travel occasionally with him.

A. That is all on that score.

In connection with the Hammond, Gary and South Bend, Indiana, stores what were your duties for the last four years? What has been the nature of your duties in

162 that connection?

A. Wait a minute. Let's divide it December 21, 1951. My duties changed.

Q. Your duties have changed since then?

A. Yes.

Q. Do you still inspect the clock disks?

A. Yes, sir.

Q. And you go to Hammond or Gary to do that?

A. Yes, sir. And now also fire, since December 27, 1951.

Q. Wait a minute. Let's keep to this. What do you mean when you say fire inspection?

A. I mean I inspect the extinguishers to see they are properly recharged.

Q. When you make your trips to Hammond and Gary—

A. And see there is no fire hazards, inflammable and combustible materials.

Q. Before December that was one of Mr. Whalen's duties?

A. Yes. He passed away.

Q. Do you have some duties with regard to the night watchmen at the 63d Street warehouse, the Ashland Avenue warehouse and the Wentworth warehouse?

A. Yes. I said we employ them. That is one of
163 the five—

Q. Suppose somebody tries to break in the Wentworth warehouse?

The Court: Counsel, what has that to do with it?

Mr. Proctor: Production of goods for commerce is also commerce, and these watchmen engaged in these warehouses are watching goods that are both in interstate commerce and being produced for commerce, and this man is their supervisor. That is what it has to do with it, and they brought in—

The Court: His direct testimony says that he does.

The Witness: Counsel, there is no production in the Wentworth warehouse.

Mr. Proctor: That is not a matter for you to talk about.

Q. You supervise the night watchmen in the three warehouses?

A. Two warehouses.

Q. Two warehouses?

A. Yes.

Q. Who supervises the watchman in the other
164 warehouse?

A. There are only two warehouses, Wentworth and Ashland.

Q. What do you call 63d and Indiana?

A. That is the commissary. That is nothing but commissary.

Q. You supervise the watchman that is stationed there, is that right?

A. Yes.

Q. And all of those watchmen make a record of their rounds, is that right?

A. No, they don't make a record.

Q. The clock makes a record?

A. Yes.

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Q. You inspect the clock disk?
A. Yes.
Q. The Cook County Bureau, Inspection Bureau, inspects the clock disk?
A. They have them in my presence. Whether they do or don't I am not able to answer that question.
Mr. Proctor: That is all.
Mr. Clinton: That is all.
(Witness excused.)

Mr. Clinton: I want to ask your Honor for leave
165 to file an amended answer in this case to set up defenses of exemptions under the local retailing exemptions.

The Court: Leave to file an amended answer will be granted. Counsel may want to reply to that. When do you want to file it?
Mr. Clinton: I can file it in a couple of days.
The Court: Five days, and ten days for you to answer.
Mr. Proctor: Yes.
The Court: Or to plead.
Mr. Proctor: Plead, answer or make a motion to dismiss.
The Court: All right. That will be the order.
Will you make out a memorandum for that motion so that the clerk will get it?
Mr. Clinton: Yes.
The Court: All right.
Mr. Clinton: Thank you, Judge.
(Here followed discussion off the record.)
Mr. Proctor: Mr. Clinton has no further evidence to offer and defendant rests.
Plaintiff rests at this time.
Mr. Clinton: That is agreeable.

167 And to wit, on the 11th day of April, 1952, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

168 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

This cause coming on for hearing of additional testimony and for hearing on the defendant's motion for leave to file amended answer come the parties by their counsel, respectively, the additional evidence for the defendant is heard and it is

Ordered that leave be and hereby is granted to the defendant to file an amended answer within five days from this date and that the plaintiff shall plead thereto within ten days thereafter.

169 And afterwards on, to wit, the 14th day of April, 1952 came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Amended Answer in words and figures following, to wit:

170 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

AMENDED ANSWER OF JOYCE AGENCY, INC.

First Defense.

1. Defendant admits the allegations contained in Paragraphs I and II.

2. Defendant admits the allegations of Paragraph III except that it denies that it presently does or for some time past has furnished watchmen and detectives for Martin Food Products, Inc.

3. Defendant admits the allegations contained in Paragraph IV except that it denies that any of said employees is engaged in interstate commerce and except that it states that the amount of production of goods for interstate commerce which occurs within said premises is insignificant and negligible and occurs within a retail establishment or is performed by employees engaged in a local retailing capacity as that term is defined and delimited by the Administrator.

Defendant further denies that any substantial quantity of goods produced by any employee in said premises has been and is being shipped, delivered, transported, offered

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for transportation and sold in interstate commerce from said place of business to other states.

171 4. Defendant admits the allegations of Paragraph V except that it denies that it is engaged in producing any foods, groceries, liquors, candies and cookies at said warehouse, and except that it denies that any employees in said building are engaged in the production of goods for interstate commerce or in processes or occupations necessary to such production, or that any goods produced by its employees on said premises is being shipped, delivered, transported, offered for transportation and sold in interstate commerce.

5. Defendant admits the allegations of Paragraph VI except that it denies that any employees employed at said warehouse are engaged in the production of goods for interstate commerce or processes or occupations necessary to such production, or that any goods produced by its employees on said premises is being shipped, delivered, transported, offered for transportation and sold in interstate commerce.

6. Defendant admits the allegations contained in Paragraph VII of the complaint but states that the goods produced by defendant's employees in said premises is infinitesimal.

7. Defendant admits the allegations of Paragraph VIII except that it denies that it cooks food such as fowl, fish, ham and other meats within said premises.

Defendant further alleges that all of its employees working within said premises are now and for a long period prior to the filing of this Complaint were employed in conformity with the labor standards of the Act.

8. Defendant admits the allegations contained in Paragraph IX. Defendant further alleges that it presently has no employees at Martin Food Products, Inc. and has not had any employees at said premises for a long time prior to the filing of the Complaint.

172 9. Defendant admits the allegations of Paragraph X except that it denies that any of its employees at its office are engaged in the production of goods for interstate commerce and in processes or occupations necessary to such production, or that any goods produced by its employees on said premises is being shipped, delivered, transported, offered for transportation and sold in interstate commerce.

10. Defendant denies the allegations of Paragraph XI except that it admits that in an inconsequential number of

instances the defendant violated the provisions of Sections 7 and 15(a)(2) of the Act and alleges that said violations have long since ceased.

11. Defendant further alleges that its previous violations of the Act were committed under a misapprehension and misconstruction of the applicable law; that upon being advised by the representatives of the Wage and Hour Division of the existence of violations, it promptly ceased and desisted said violations.

Defendant further alleges that it has every intention in utmost good faith to hereafter comply with the labor standards imposed by the Act and that it is utterly unnecessary for the injunctive power of this Court to be invoked.

Second Defense.

The defendant alleges that many of its employees are engaged in a bona fide executive, administrative or professional capacity, or in the capacity of outside salesmen, as such terms are defined and delimited by the regulations of the Administrator. Therefore, Sections 6 and 7 of the Act are not applicable to such of the defendant's employees, in accordance with Section 13(a)(1) of the Act.

173

Third Defense.

The defendant alleges that all of its employees are engaged in a local retailing capacity as such terms are defined and delimited by the regulations of the Administrator. Therefore, Sections 6 and 7 of the Act are not applicable to defendant's employees, in accordance with Section 13-(a)(1) of the Act.

Fourth Defense.

The defendant alleges that all of its employees are engaged in a retail establishment the greater part of whose selling is in intrastate commerce; and therefore, Sections 6 and 7 of the Act are not applicable to defendant's employees in accordance with Section 13(a)(2) of the Act.

Wherefore, defendant respectfully prays that this proceeding be dismissed.

Joyce Agency, Inc.,
By Edwin G. Boltz, Sr.,
President.

Stanford Clinton and Jay A. Pritzker,
134 North LaSalle Street,
Chicago 2, Illinois.

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State of Illinois, } ss:
County of Cook. }

Edwin G. Boltz, Sr., being first duly sworn, deposes and says that he is the President of Joyce Agency, Inc., and that he is duly authorized by the defendant, Joyce Agency, Inc., in this behalf; that he has knowledge of the facts and that the foregoing Answer by him subscribed on behalf of Joyce Agency, Inc., is true.

Edwin G. Boltz, Sr.

Subscribed and sworn to before me this 14th day of April, A. D. 1952.

Daisy Cain,
Notary Public.

(Seal)

Received a copy of the within Amended Answer of Joyce Agency, Inc. this 14th day of April, 1952.

United States Department of Labor,
By Herman Grant by Richard W. Proctor,
Attorney,
Its Regional Attorney.

174 And afterwards on, to wit, the 25th day of April, 1952 came the Parties by their attorneys and filed in the Clerk's office of said Court their certain Stipulation in words and figures following, to wit:

175 In the United States District Court.
* * (Caption—49-C-1558) * *

STIPULATION.

It Is Hereby Stipulated and Agreed by and between the parties hereto that, for the purpose of this proceeding only, not less than seventy-five per cent (75%) of the sales in each of the retail stores operated by Goldblatt Bros., Inc. are retail sales of goods within the meaning of the Act and are made within the State in which each said store is located.

It is Further Stipulated and Agreed that this cause is hereby submitted on the stipulation heretofore filed and

the evidence heretofore taken in open court. Dated April 24, 1952.

William S. Tyson,
Solicitor,
Herman Grant,
Regional Attorney.
Richard W. Proctor,
Attorney,
Attorneys for Plaintiff, United States Department of Labor,
Stanford Clinton,
Jay A. Pritzker,
Attorneys for Defendant.

176 And afterwards on, to wit, the 19th day of March, 1953 there was filed in the Clerk's office of said Court a certain Memorandum of the Court in words and figures following, to wit:

177 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

MEMORANDUM.

Plaintiff brings this action under Section 17 of the Fair Labor Standards Act of 1938, as amended, to enjoin the defendant from violating Sections 17 and 15(a)(2) of the overtime provisions of the Act.

The complaint filed October 13, 1949, alleges that the defendant has since October 1, 1940, employed employees in interstate commerce and in the production of goods for interstate commerce at the warehouses of Goldblatt Brothers, Inc., located at 3913 South Wentworth Avenue, 3161 South Ashland Avenue, 201 East 63rd Street, 328 South Wabash Avenue, the Lexington Bakery and Martin Food Products, Inc. and at defendant's central office all located in Chicago, Illinois, without compensating the employees for hours worked in excess of 40 hours per work week at the overtime rate required by Section 7 of the Act.

The principal issue is whether the defendant's employees were engaged in interstate commerce or the production of goods for interstate commerce within the meaning of the Fair Labor Standards Act.

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Since the defendant has complied with the Act in the case of its employees at the Lexington Bakery since May 2, 1949, and since it has no employees at the Martin Food
178 Products since July 3, 1949, both prior to the filing of this action, the Court considers the question as to defendant's compliance in these two instances as moot. The employees at these establishments, therefore, are not the subject of this decision.

Goldblatt Brothers, Inc. operates a huge merchandise system, involving an annual sale of goods in excess of 90 million dollars a year through 14 retail stores. Approximately 20% of the total sales are made by three Indiana stores and a very large percentage of these goods are distributed from the four warehouses directly to the stores in Indiana by means of Goldblatt's own motor transportation system consisting of 127 trucks, 70 trailers and 17 tractors. Goldblatt Brothers carry a large amount of fire and extended coverage, sprinkler leakage and hold-up insurance on the warehouses and contents and the motor fleet and its activities. Availability of such insurance and the premiums charged therefor is favorably affected by the employment and presence of the defendant's employees.

The sales value of the merchandise handled annually by each warehouse ranges between a figure in excess of 30 million dollars at the Wentworth Avenue warehouse and 10 million dollars at the 63rd Street warehouse. Exclusive of the Wabash Avenue establishment, the warehouses receive regularly and daily no less than 50% of the merchandise from points outside of the State of Illinois. Between 17 and 20% of this merchandise is shipped from three warehouses to points outside of the State. Approximately 22% of the goods received at the Wabash Avenue warehouse is received regularly and daily from outside of the State and 2% is shipped to Goldblatt Brothers' customers outside of the State of Illinois. Goldblatt Brothers, Inc. employs persons at all warehouses, who are engaged in receiving, unloading, checking, unpacking, storing, handling, assembling, repacking for delivery, servicing, transporting to store runs, distributing and the shipping of merchandise to Goldblatt Brothers' department stores and customers.

The defendant is an Illinois corporation with an office
179 at 343 South Dearborn Street, Chicago, Illinois. It is engaged in the business of furnishing watchman, guard, detective, fire inspection and shopping services to Goldblatt Brothers, Inc. All of the Joyce employees have

worked and for the most part are now working in excess of 40 hours a week. They are paid either a weekly salary or an hourly rate and are not paid the statutory overtime required by Section 7 of the Act.

The defendant offers Goldblatt Brothers a highly systematic protection service, which exceeds the normal watchman activity. This service which can be divided into that rendered by the day guards and night watchmen is basically the same in all four warehouses. The primary difference is found in the number of employees used by defendant at the various warehouses to administer this protective service. The number of guards and watchmen at each warehouse seems to be determined by the volume of business activity at each establishment. In general, the defendant's employees are entrusted with the duty and responsibility of guarding Goldblatt Brothers' premises and contents from fire, theft and other hazards. The defendant's guards maintain a close watch over all stages of the respective operations on both the receiving and shipping platforms. They guard, lock and unlock the doors to both platforms and check the traffic of persons at the front door and the shipping platform where only authorized personnel are allowed. They make and maintain memoranda regarding valuable shipments leaving the shipping platforms. These memoranda are transmitted to the front door guard, who in turn notifies by telephone the service guard at the designated retail store. The guards maintain and distribute the stock of truck and trailer seals, guard and check the locks and seals on all incoming and outgoing vehicles, and control the departure of all vehicles. They make telephone calls inside and outside the State relaying information concerning incoming and outgoing goods. They also receive communications from the central office and maintain an instruction log. The guards make up the payroll
180 and handle information and reports on all thefts and recoveries.

The night watchmen patrol the entire premises, guard the goods in all stages of being received, handled, stored, prepared for shipments and shipped including those enroute to the shipping platform and on the receiving and shipping platforms, as well as in the railroad cars and motor trucks and trailers in the truck pit, together with the cars, trucks and trailers themselves from fire, theft and other damage.

It is the plaintiff's contention that Goldblatt's employees

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at each of the warehouses are engaged in interstate commerce and in the production of goods for interstate commerce. From this premise it follows that the guards and watchmen employed by the defendant who guard and watch the goods as they are produced and as they are moving in interstate commerce to and from the warehouses, together with the trucks and freight cars which are the instrumentalities of such commerce and who otherwise participate in the activities there carried on, are also engaged in commerce and the production of goods for commerce.

The defendant denies that its employees are engaged either in interstate commerce or in the production of goods for such commerce. The defendant further contends that its employees are exempt by virtue of the provisions of Section 13 (a) (1) and (2) of the Act.

The Act is designed for the benefit of those employees who are either engaged in interstate commerce or in the production of goods for commerce. Where, as in the case before the bar, the warehouse activities, among other things, consist of the receiving and unloading of goods arriving from other states and of the shipping of goods into other states, such activities are an engagement in interstate commerce. *Walling* v. *Goldblatt Bros.* 128 F. 2d 778. Employees, whose activities contribute so materially and directly or are so closely related to interstate commerce as to be in practice and legal contemplation a
181 part thereof, are to be considered as engaged in interstate commerce, and are, therefore, within the provisions of the Fair Labor Standards Act. *Overstreet* v. *North Shore Corp.*, 318 U. S. 125; *McLeod* v. *Threlkeld*, 319 U. S. 491. It is the view of this Court that both the day guards and night watchmen, employed by the defendant in the various warehouses do, by virtue of their activities, contribute so materially and directly to interstate commerce as to be a part thereof, and are, therefore, within the provisions of the Act. Their activities cannot be considered as remote local services. They are the integral components of a highly systematic security system which is as important and vital part of this commerce as traffic control and other warehousing and shipping techniques. This is borne out by the fact that the protection service is given not only at the warehouse premises but also during the course of transportation itself, by means of telephonic communications regarding shipments to designated stores. The fact that the night watchmen assume none of these operational

duties, but are limited, more or less, to the patrolling and guarding of the premises during the night hours does not withdraw them from interstate commerce. They guard against fire, theft, and other hazards, during a time of greater need, not only the wares, which are in the process of being received as well as shipped in interstate commerce, but also the vehicles, which are the instrumentalities of that commerce. *Walling* v. *Sondock,* 132 F. 2d. 77, cert. denied, 318 U. S. 772, *Slover* v. *Wathen,* 140 F. 2d 258, *Russell Co.* v. *McComb,* 187 F. 2d.

If this Court is to hold that the defendant's employees are engaged in the production of goods for interstate commerce, it must find that they are engaged "in any closely related process or occupation directly essential to the production thereof." 29 U.S.C.A. 203(j). The Court, therefore, must first determine whether the activities of the Goldblatt employees in the warehouses are production of goods for interstate commerce. Production means "handled or in any other manner worked on." 29 U.S. C.A. 203(j). The terms, "handled" or "worked on" in-
182 clude every kind of incidental operation preparatory to putting goods into the stream of commerce. *Western Union Telegraph Co.* v. *Katherine Lenroot,* 323 U.S. 490, *Engebretsen* v. *E. J. Albrecht Co.* 150 F. 2d 602. Under this judicial interpretation, the manifold activities of Goldblatt's employees in picking, handling, checking, packing and transporting goods destined for Goldblatt's Stores or customers outside the State of Illinois constitute the "production for commerce within the meaning of the Act."

It is the view of this Court that the defendant's employees in the warehouses are engaged in the production of goods for commerce because they are engaged in a "closely related process or occupation directly essential to the production" of goods for commerce which is being carried on at the various warehouses. The importance of this protection service, as previously outlined when the employees' engagement in commerce was discussed, is equally applicable to the production of goods for commerce. The favorable effect of this protection service upon the Goldblatt insurance program also serves to emphasize its importance. It has repeatedly been held that guards and watchmen of premises, where production of goods for interstate commerce is carried on, are also engaged in the production of goods for commerce by virtue of their relation-

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ship thereto. *Kirschbaum* v. *Walling*, 316 U. S. 517, *Walton* v. *Southern Package Corp.*, 320 U. S. 540, *Engebretsen* v. *E. J. Albrecht Co.*, supra; *Russell Co.* v. *McComb*, supra.

The defendant claims that the majority of the decisions relating to guards and watchmen were decided prior to the 1949 amendment when the pertinent statutory phrase of Section 3(j) read as follows: "or in any process or occupation necessary to the production thereof." These decisions, therefore, are not applicable under the present restricted amendment. This contention cannot be sustained. The legislative history of the amendment clearly indicates that there was no intention to overturn the existing law and exclude this class of employees from coverage by the Act. A careful examination also indicates that the amendment is expressed in the language of the
183 *Kirschbaum* case. The traditional and prevailing view on this class of employees was adopted in the case of *Russell Co., Inc.* v. *McComb*, supra, decided after the amendment.

At the defendant's central office, the bookkeeper handles every phase of the defendant's payroll for its employees at each Goldblatt establishment including Indiana. She also prepares cash disbursement reports covering the defendant's operations in every Goldblatt establishment. The statement clerk receives and maintains records regarding the arrest of shoplifters and dishonest employees at all Goldblatt establishments. She relays to the guards any information she might have at the time of arrest, and checks prospective Goldblatt employees against these records. Finally, the statement clerk prepares a monthly statement of arrests and goods returned, and submits it to Goldblatt. Both use the mails extensively in carrying out these duties. Until April 1, 1951, the switchboard operator handled all calls, including the calls to Indiana stores. She transmitted information relative to shipments across the state lines as well as bad checks cashed at all Goldblatt stores and warehouses. Since that date, these duties are being performed by the bookkeeper and statement clerk.

The interstate telephone activity of these three employees as well as the interstate use of the mails by the bookkeeper and the statement clerk in order to conduct the defendant's business throughout the entire Goldblatt enterprise is an engagement in interstate commerce, thereby bringing these employees within the provisions of the

Act. Furthermore, their employment activities effectuate the coordination, integration and orderly administration of the defendant's protection service at the warehouses, where there is production of goods for commerce. Since these accomplishments are as important to the service as the very acts of protection, these employees are engaged in a "closely related process or occupation directly essential to the production thereof." *Borden* v. *Borella*, 325 U. S. 679.

The defendant's fire inspector works out of the 184 central office. He inspects all Goldblatt stores and warehouses to insure compliance with the regulation of insurance association underwriters to prevent cancellation of insurance and to obtain compliance with the city fire ordinance. He inspects the Indiana stores biweekly, the warehouses weekly. He inspects fire extinguishers and sees that they are properly loaded at all times. He supervises two fire drills a year at each Goldblatt establishment.

The inspector's activities at the warehouses contribute so materially to interstate commerce as to be a part of it. This and his interstate travel places him in interstate commerce, and, therefore, within the Act. His activities at the warehouses, where there is production of goods for commerce, is directly essential to the production thereof. His duties are as important to fire protection as the actual guarding against fire itself. Compare *Walton* v. *Southern Package Corp.*, supra.

The defendant's employees are not exempt under the provisions of Sec. 13(a)(1), which exempts those employed in a bona fide executive, administrative, professional capacity or local retailing capacity or in the capacity of outside salesmen. Their duties do not meet the requirements, which have been set down by the Administrator. Regulations, Part 541. They do not render professional or sales services. They have nothing to do with management policies. These employees are performing the routine tasks of assisting in the general administration of the defendant's business. Furthermore, the defendant's employees are not employed in a "local retailing capacity," as the term is defined by the Administrator. Their duties do not consist of the making of retail sales nor of the performance of work immediately incidental to such retail sales, such as the weighing, wrapping or the delivery of merchandise to a customer. Explanatory Bulletin Regulations Part 541.401.

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The defendant's employees are not exempt as a "retail or service establishment" under the provisions of Section 13 (a) (2) of the Act. They are not engaged in the
185 sale of goods nor are they employed in or by a retail establishment. They are not engaged in that type of "service" to which the exemption refers, namely, a service "performed by establishments which are traditionally recognized as local retail service establishments such as the restaurant, hotel, barber shop, repair shops, etc." Interpretative Bulletin Sec. 779.7. It is significant that the aforementioned Administrator's Bulletin, based upon his experience, legislative history and judicial decisions, does not classify an establishment of the defendant's type as retail. Section 779.10. The Courts may properly look to these bulletins for guidance. *Skidmore* v. *Swift & Co.* 323 U. S. 134.

The plaintiff's prayer for reparation by the defendant to its employees in the amounts due to them by reason of the defendant's violations of the Act is denied because the Court does not have jurisdiction of these matters in this proceeding for an injunction. 29 U. S. C. A. 217.

An appropriate decree will be entered in favor of the plaintiff.

The plaintiff, having served copies thereof upon the defendant, will present detailed findings of fact and conclusions of law and an appropriate decree in open Court on April 6, 1953, at 10:00 A. M.

(Signed) J. S. Perry,
Judge.

186 And afterwards, to wit, on the 24th day of April, 1953, being one of the days of the regular February terms of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

187 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—49-C-1558) * *

ORDER OF SUBSTITUTION OF PLAINTIFF.

It being represented to this Court that on January 21, 1953, Martin P. Durkin succeeded Maurice J. Tobin, Secretary of Labor, United States Department of Labor, and

thereby Martin P. Durkin succeeded Maurice J. Tobin, plaintiff in this cause, in the performance of his functions under the provisions of the Fair Labor Standards Act of 1938, as amended, Title 29 U. S. C., Section 201, et seq.; and that there is a substantial need for continuing and maintaining the above-entitled action and obtaining a final adjudication of the questions involved therein; and that with the consent of all parties hereto it is

Ordered that Martin P. Durkin, Secretary of Labor, United States Department of Labor, be, and he hereby is, substituted as plaintiff herein in place of Maurice J. Tobin without prejudice to the proceedings already had in this action, and that this cause may be continued and maintained by the said Martin P. Durkin as successor to Maurice J. Tobin.

Dated: Feb. 24, 1953.

J. S. Perry,
United States District Judge.

Entry of this order is hereby consented to and notice of entry thereof is waived.

Stanford Clinton,
Jay A. Pritzker,
Attorneys for Defendant.
William S. Tyson,
Solicitor,
Herman Grant,
Regional Attorney,
Ruth Provus,
Attorney,
Attorneys for Plaintiff, United States Department of Labor.

188 And afterwards, to wit, on the 7th day of May, 1953, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable J. Sam Perry, District Judge, appears the following entry, to wit:

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189 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The Court, having considered the pleadings, the stipulations of the parties and exhibits submitted therewith, the oral testimony and the briefs submitted by respective counsel, being fully advised in the premises and having entered its memorandum decision which is incorporated herein and made a part hereof, does hereby now make and enter, pursuant to Rule 52 of the Federal Rules of Civil Procedure its further Findings of Fact and Conclusions of Law as follows:

Findings of Fact.

1. The defendant, Joyce Agency, Inc., is an Illinois corporation with its central office at 343 South Dearborn Street, Chicago, Illinois. It is engaged in the business
190 of furnishing watchmen, guard, detective, fire inspection, and shopping service to Goldblatt Bros., Inc.

2. Goldblatt Bros., Inc., hereinafter called "Goldblatt," operates a chain of fourteen retail department stores, of which ten are in the city of Chicago and one in each of the cities of Joliet, Illinois; Hammond, Gary, and South Bend, Indiana. The total sales volume of all Goldblatt's stores for the fiscal years ending January 31, 1950 and January 31, 1951, was $90,120,214 and $94,957,514, respectively. Of these amounts, $17,369,674 for the fiscal year 1950 and $18,913,500 for the fiscal year 1951 represent sales by Goldblatt's stores in Hammond, Gary, and South Bend, Indiana.

3. Goldblatt maintains a motor transportation system consisting of 127 trucks, 70 trailers, and 17 tractors.

4. Goldblatt maintains in Chicago, Illinois, warehouses at:

3913 Wentworth Avenue, hereinafter referred to as "Wentworth Warehouse"

3161 South Ashland Avenue, hereinafter referred to as "Ashland Warehouse and Garage"

201 East 63rd Street, hereinafter referred to as "63rd Street Warehouse"

328 South Wabash Avenue, hereinafter referred to as "Wabash Warehouse".

5. Approximately 70 per cent of the goods received at the Wentworth Warehouse is regularly and daily received in interstate commerce from points outside of the State of Illinois. Merchandise having a sales value of more than 30 million dollars was both received at this warehouse
191 and shipped to Goldblatt stores during each of the fiscal years ending January 31, 1950 and 1951. Approximately 20 per cent of the merchandise shipped from the Wentworth Warehouse is shipped to Goldblatt's stores in Hammond, Gary, and South Bend, Indiana.

6. The goods handled at the Wentworth Warehouse are the "soft lines" and items of small bulk, including such merchandise as textiles, wearing apparel, furs, jewelry, small appliances, cameras and photographic equipment, sporting goods, chinaware and glassware, cigarettes and tobaccos, automobile supplies and tires, toys, lamps, pictures, mirrors, stationery, paper products, typewriters, bedding, shoes, rubbers, and drugs.

7. Goldblatt employs approximately 150 persons at the Wentworth Warehouse in the receiving, unloading, checking, unpacking, storing, handling, assembling, repacking, transporting to "store runs," distributing, and shipping of merchandise to Goldblatt's department stores.

8. Goldblatt employees at the Wentworth Warehouse daily receive, unload, and check incoming goods, 70 per cent of which goods is received in interstate commerce from points without the State of Illinois. The receiving department employees deposit these goods on the receiving platform and on freight elevators adjacent to and opening onto the railroad siding. Shipments from 50 to 60 trucks and trailers are received daily and an average of four railroad freight cars is received each week. "Break-bulk" ship-
192 ments, which are received daily, are taken after unloading directly from the receiving platform to the shipping platform for immediate forwarding to a particular Goldblatt store designated on the common carrier freight bill for such shipment. All other goods, after being unloaded, are moved to the various stock departments and are unpacked, counted, checked, marked, and placed in stock. Orders for all Goldblatt stores are filled from said stock departments in the following manner: The merchandise is picked from stock, placed in bins, checked and packed in containers, or placed on racks; sorted and checked by store, taken to the "store runs" on the shipping platform,

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from which they are loaded onto Goldblatt's trucks and trailers, and transported to Goldblatt's stores, including the three Indiana stores. Orders not completely picked or packed by quitting time are left in that incompleted state in their respective stock departments until the next working day. Assembled goods are left in the "store runs" until the next working day. Trucks or trailers which are loaded and sealed, partially loaded, or empty also remain in the warehouse until the next working day. An average of 75 Goldblatt trailers is loaded weekly at the shipping platform and of this number approximately 15 trailers a week go to Goldblatt's Indiana department stores. Goods are daily transported to Goldblatt's stores, including the stores in Hammond, Gary, and South Bend, Indiana.

9. Defendant employs four day guards and four night watchmen to guard the Wentworth Warehouse against fire, theft, or other casualty or damage to Goldblatt's physical property or goods. The duties of these employees are set forth with greater particularity in findings 10, 11, 12, 13, and 14 hereof.

193 10. One day guard is employed by defendant in the receiving department of the Wentworth Warehouse. He maintains a close watch over all the operations at the receiving platform, guards the goods throughout their receipt, unloading, and checking by Goldblatt's employees, and excludes unauthorized persons or persons other than the unloaders and checkers from the receiving platform. In the morning he unlocks the nine receiving doors at the receiving platform, the twelve steel doors in the shipping department, and the fire doors on all floors of the warehouse. He locks and unlocks the receiving doors before and after the lunch period, and again locks them at the end of the Goldblatt working day. He also relieves the defendant's shipping department guard for lunch. On every third Saturday he is also employed from 7 a. m. till 5 p. m. at the 63rd Street Warehouse, as described in finding 31 hereof.

11. A second day guard is employed by defendant in the shipping department of the Wentworth Warehouse. He maintains a close watch over all the operations on the shipping platform, guards the twelve steel doors in the shipping department to make certain that unauthorized persons do not enter or leave the warehouse through these doors, and watches goods in the "store runs." He guards the

Goldblatt trailers and trucks as they are being loaded, and after the truck or trailer is locked and sealed by Goldblatt's employees, defendant's shipping department guard checks the locks and seals on the side and rear before he permits the vehicle to depart. In addition, he guards shipments of "valuable goods" (goods particularly susceptible to theft, such as, cigarettes, furs, jewelry, guns, and
194 nylon hosiery), taking personal custody of these goods at a designated place on the shipping platform, guarding them at all times while they are on the platform and throughout the loading process until the trailer is locked and sealed, and then preparing a shipment memorandum listing the nature of the goods being shipped, department number, number of pieces, bill number, trailer number, and seal number. He gives this memorandum to the defendant's Wentworth Warehouse front door guard, who transmits this information to defendant's guard or special service man stationed at the Goldblatt store to which the goods are being shipped. It is also the duty of defendant's shipping department guard to admit to the shipping platform all incoming trucks and trailers, and examine the seals on both sides and rear of all incoming Goldblatt trucks and trailers to see that they are intact. If a seal is not in order, this guard telephones the defendant's detective or special service man at the place of origin, including the Indiana stores. This guard is also charged with seeing that the twelve steel doors are locked.

12. A third day guard of defendant is stationed at the "front door" of the Wentworth Warehouse, through which all Goldblatt employees enter and leave. This guard admits the United States mailman three times a day to deliver mail to the Goldblatt mail clerk at the Wentworth Warehouse. He checks all packages being carried out the front door. When a Goldblatt trailer or truck leaves the Wentworth Warehouse for a Goldblatt store too late to arrive before closing time, this guard relays the information by telephone to defendant's switchboard operator in defendant's central office and the switchboard operator telephones the information to the defendant's detective or
195 special service man at the Goldblatt store involved, notifying him that the trailer will arrive late and is to be received. Defendant's front door guard is notified by defendant's central office of persons who will remain in or who will enter the Wentworth Warehouse after closing

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time. This information is entered on a watchman's log by the front door guard for the use of defendant's night watchmen.

13. A fourth day guard of defendant is employed as the head house detective at the Wentworth Warehouse. He is in charge of all the defendant's day guards at this warehouse and is responsible for protecting during the day the buildings composing the Wentworth Warehouse, the merchandise therein, and the operations carried on therein. He patrols the entire warehouse guarding against fire, theft, and other hazards. At the warehouse closing time he makes certain that the time clock on the front door is set and in operating order. He checks the time clock tape to see that the night watchmen have made all proper stations during the night, and is responsible for preserving the tapes for inspection by the Cook County Inspection Bureau, which approves or disapproves the security measures taken by insurance policyholders and, upon the basis of its findings, determines whether the policyholders shall be permitted to continue their insurance, whether premium discounts shall be allowed, or whether additional premiums shall be charged. The head house detective has charge of the supply of seals used by the entire Goldblatt system to seal trucks and trailers, regularly supplies seals to each of the various stores and warehouses for their use, keeps a record of the seals, and requisitions a new supply of seals when required. He apprehends dishonest em-
196 ployees or strangers, makes a record and report of any arrest or incident to the defendant's central office, and prepares a monthly report of stolen goods recovered and restitution paid in connection with thefts. He relieves any of the day guards whenever occasion requires, and prepares the records of hours worked daily and salary rate for all defendant's day guards and night watchmen working at the Wentworth Warehouse.

14. There are two 2-man crews of night watchmen employed by defendant at Wentworth Warehouse, one crew working the early shift and the other the late shift. These night watchmen patrol the entire warehouse making hourly rounds of twenty key stations. They guard the goods in the warehouse in all stages of being received, handled, stored, and prepared for shipment, including the goods enroute to the shipping platform and on the receiving and shipping platform. In the shipping department they also guard

the partially-loaded trailers and trucks and trailers that may be locked and sealed. They also look out a nearby window to detect prowlers on or in the vicinity of the railroad cars and notify the city police if they detect any prowlers around the freight cars or warehouse.

15. Approximately 65 per cent of the goods received at the Ashland Warehouse and Garage is regularly and daily received in interstate commerce from points outside the State of Illinois. Merchandise having a sales value of more than 12½ million dollars was both received at this warehouse and shipped to Goldblatt stores or to customers thereof during each of the fiscal years ending Janu-
197 ary 31, 1950 and 1951. Approximately 20 per cent of the merchandise shipped from the Ashland Warehouse and Garage is regularly and daily shipped to Goldblatt's stores or customers in Hammond, Gary, and South Bend, Indiana.

16. The goods handled at the Ashland Warehouse and Garage are the "hard lines" or "bulk merchandise" including such merchandise as rugs, carpets, linoleum, springs and mattresses, refrigerators, sewing machines, radio and television sets, electric and gas ranges, washing machines, and furniture of almost every description, including studio couches and folding beds.

17. Goldblatt employs approximately 150 persons at the Ashland Warehouse and Garage in the receiving, unloading, checking, unpacking, storing, handling, assembling, repacking for delivery, servicing, transporting to runs, distributing, and shipping of merchandise to Goldblatt's department stores and customers thereof.

18. At the truck and railroad receiving platform of the Ashland Warehouse and in the garage warehouse building in the Ashland Garage, Goldblatt employees are engaged daily in receiving, unloading, and checking incoming goods and depositing them on the platforms or floor of the garage warehouse building. Approximately 65 per cent of these goods is received in interstate commerce from points without the State of Illinois. The incoming goods, after being unloaded and checked, are moved to stock departments in the warehouse. When orders are filled, merchandise is picked from stock, hauled to the appropriate run be-
198 hind the shipping and loading platform, loaded onto Goldblatt trucks and trailers, and transported either to Goldblatt stores, including the three Indiana stores, or

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to customers of Goldblatt stores, some via the Hammond and Gary delivery base. Between 15 and 25 trailerloads are shipped to Indiana weekly. Goods assembled in the runs, which have not been loaded onto trucks and trailers by quitting time, remain in the runs until the next working day. Similarly, trucks or trailers which are loaded and sealed, or partially loaded, or empty, remain in the warehouse until the next working day.

19. Goldblatt employs approximately 30 employees at the Ashland Warehouse in the furniture renovating shop reconditioning, upholstering, repairing, assembling, refinishing, and polishing furniture. Fifty Goldblatt employees are employed in the radio and television clinic in removing television and radio sets from their cases and repairing sets. Twelve Goldblatt employees are employed in the carpet and linoleum department in cutting, serging, edging, and binding carpets and in cutting linoleum. Four employees are employed in unpacking sewing machines and accessories, testing sewing machines, and installing them in cabinets and portable cases. These operations are performed on merchandise for all of the Goldblatt stores and customers thereof, including those in Indiana. In the garage shop Goldblatt employs seven mechanics, one washer, and one tire changer in repairing, rebuilding, and maintaining Goldblatt's entire motor transportation fleet.

199 20. Defendant employs two day guards at the Ashland Warehouse and from four to six night watchmen to guard the Ashland Warehouse and Garage against fire, theft, or other casualty or damage. The duties of these employees are described with greater particularity in findings 21, 22, 23, 24, 25, and 26 hereof.

21. One day guard employed by defendant is stationed at the truck and railroad receiving platforms in the Ashland Warehouse. He guards both the truck and railroad receiving platforms, the checking, unloading, and depositing on the platform, by Goldblatt employees of all goods received in 50 or 60 trucks and trailers daily and eight freight cars weekly. He excludes unauthorized persons from the receiving platforms and enforces the "No Smoking" regulations. He unlocks and locks the six truck receiving doors at the beginning and end of the workday and at the lunch period. He checks the fire doors to see that they are not blocked and will operate.

22. A second day guard employed by defendant is stationed in the guard booth near the truck pit in the shipping department for the Ashland Warehouse and Garage. He guards the ingress and egress of all persons, motor trucks and trailers, and goods to and from the shipping platform. He operates the electrically controlled doors and lets trucks in and out. He guards the loading of goods. As each Goldblatt trailerload is completed, he locks the trailer, affixes metal seals on the trailer side and rear, and then records the number of the seals, the trailer number, and time of departure, and the destination of shipment of the out-
200 going trailer. Between three and five trailers leave the shipping platform daily for Indiana. The defendant's guard checks incoming Goldblatt trailers, removes the seals from the rear and side doors, records the seal number, the trailer numbers, time of arrival, point of origin, and whether the trailer carried a shipment. An average of three to five Goldblatt trailers is received each day from Indiana. The guard makes and receives telephone calls regarding shipments to and from all Goldblatt establishments, including the Indiana stores. He receives and sorts inter-office mail and United States mail for the Ashland Warehouse and Garage. He also prepares the records of hours worked daily and salary rate for all defendant's day guards and night watchmen working at the Ashland Warehouse and Garage, and submits these records weekly to defendant's main office where the records are completed.

23. Until February 1, 1951, defendant stationed a day guard in the guard's booth at the garage entrance of the Ashland Garage. The guard controlled the ingress and egress of trucks and trailers entering or leaving the garage by means of an electrically controlled garage door. He recorded the time of entry of all incoming Goldblatt trailers admitted through this garage door, and broke the seals on the trailers if they were to be unloaded. He was also required to seal, front and side, all Goldblatt trailers leaving the Ashland Garage; to make a record of the seal numbers, the time of departure, and destination of the trailer. He enforced the "No Smoking" regulation. At the end of a half day's work this guard exchanged posts with the day guard stationed at the receiving platform
201 described in finding 21 hereof. Since February 1, 1951, the duties of this guard have been performed by a Goldblatt employee.

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24. Defendant has a night watchman stationed in the guard booth near the truck pit in the shipping department for the Ashland Warehouse and Garage. This is the same station manned by the day guard described in finding 22 hereof. From 5 p. m. to 9 p. m., nightly, he operates the electrically controlled doors to admit incoming Goldblatt trucks and trailers from all Goldblatt establishments, checks and records their arrival, point of origin, seal numbers, and whether loaded or empty. At about 9 p. m., after the last trailer and truck are checked in and drivers checked out, this watchman patrols the entire Ashland Warehouse making hourly rounds of twelve key stations, guarding all goods that are in various stages of receipt, storage, and preparation for shipment, and all doors and other possible means of entry into the warehouse. At the truck and railroad receiving platforms, he checks the six receiving doors and guards the railroad freight cars which may be loaded, partially loaded, or empty. During the night, as occasion requires, he opens the railroad doors and receives freight cars which come in at the rate of about eight cars a week; records the time of arrival, serial number of cars, and name of railroad company; remains on the railroad receiving platform during the entire time the railroad crew is in the train shed; and before permitting the removal of empty freight cars, inspects them to see that no goods are left in them.

25. Defendant has a night watchman stationed in
202 the guard's booth at the garage entrance of the Ashland Garage. Between 5 p. m. and 10 p. m. his duties are as follows: By means of an electrically controlled garage door, he controls the ingress and egress of trucks and trailers entering or leaving the garage. He records the time of entry of all incoming Goldblatt trailers admitted through this garage door, and breaks the seals on the trailers if they are to be unloaded. He is also required to seal, front and side, all Goldblatt trailers leaving the Ashland Garage, to make a record of the seal numbers, the time of departure, and destination of the trailer. At about 10 p. m., after the last truck or trailer is checked in and parked, this guard locks the guard's booth and begins his hourly rounds of seven key stations so located as to require him to cover the entire Ashland Garage, guarding all goods in various stages of receipt, storage, and preparation for shipment; all trucks and trailers in the garage; and all doors and other possible means of entry into the ware-

house. Between rounds he also opens the doors and checks in or out persons, trailers, or trucks, as emergencies require, and at about 5 a. m. checks out a Goldblatt truck carrying advertising material to the Indiana store.

26. For approximately three months during the late winter and spring, defendant has a night watchman stationed in the rear of the east loading building of the Ashland Garage. This watchman guards shrubs, plants, fertilizer, and garden goods stored under a large canvas or tent against theft, wind, fire, and other hazards. He guards against possible theft by train crews engaged
203 in delivering and picking up railroad freight cars at the train shed, or in spotting such cars in the rear of the building. He also guards the freight cars spotted on the outside of the train shed. He makes clock stations consecutively.

27. Approximately 50 per cent of the goods received at the 63rd Street Warehouse is regularly and daily received in interstate commerce from points outside the State of Illinois. Merchandise having a sales value of more than 10 million dollars was both received at this warehouse and shipped to Goldblatt stores during each of the fiscal years ending January 31, 1950 and 1951. Approximately 17 per cent of the goods shipped from the 63rd Street Warehouse is regularly and daily shipped to Goldblatt stores in Hammond, Gary, and South Bend, Indiana.

28. The goods handled at this warehouse are groceries, liquors, beer, candies, and cookies, as well as garden tools and pet shop supplies. During the 12-month period ending January 31, 1950, Goldblatt sold $17,207,154 worth of food products in all of its retail stores; of this amount, in excess of 10 million dollars represents food products which were handled and shipped from the 63rd Street Warehouse. Liquors and beer are not shipped to Indiana stores.

29. Goldblatt employs approximately 26 persons at the 63rd Street Warehouse in the receiving, unloading, checking, unpacking, storing, handling, assembling, packaging, packing, transporting to "store runs," distributing, and shipping of goods to Goldblatt stores.

204 30. Goldblatt employees at the 63rd Street Warehouse daily receive, unload, check, and deposit goods on the truck and railroad receiving platform, 50 per cent of which is received in interstate commerce from points without the State of Illinois. Shipments from 25 to 30

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trucks and trailers are daily received at the truck receiving platform, and an average of three freight cars per week at the railroad receiving platform. The goods, after being unloaded, are moved to the appropriate stock department. Merchandise is picked from stock as required by the particular Goldblatt store order, then checked, packed in containers, transported to the appropriate "store run," loaded onto Goldblatt trucks and trailers, locked and sealed, and thereafter transported to the Goldblatt store. Orders not completely picked or packed by quitting time are left in that incompleted state in their respective stock departments until the next working day; assembled goods are left in the "store runs"; and trucks and trailers which are loaded and sealed, or partially loaded or empty remain in the truck pit until the next working day.

31. Defendant has a night watchman stationed at the 63rd Street Warehouse. Two regular night watchmen and one or more relief watchmen are employed at this warehouse but only one night watchman is on duty at any one time. The night watchman makes hourly key clock rounds covering the entire 63rd Street Warehouse, including the receiving and shipping platform. On every round during approximately eight months of the year he checks the boiler which heats the whole building. On his rounds he guards all goods in all stages of being received, stored, handled, and prepared for shipment, including those goods on the platform and in the motor trucks and trailers, the trucks and trailers, themselves, and all doors, windows, skylights, ventilators, and other means of entry into
205 the warehouse, particularly the roof, to see that freight cars are not used as a means of ingress. He watches the interstore mail, and ingress and egress thereof.

32. Approximately 22 per cent of the incoming goods received at the Wabash Warehouse is regularly and daily received in interstate commerce from points outside the State of Illinois. Merchandise having a sales value of more than 18 million dollars was received at this warehouse during each of the fiscal years ending January 31, 1950 and 1951. Approximately 2 per cent of the goods shipped from this warehouse is regularly and daily shipped to Goldblatt's customers located outside the State of Illinois, the sales value of these shipments totaling approximately $180,000 during each of the fiscal years ending January 31, 1950 and 1951.

33. Goldblatt employs approximately 69 persons at the Wabash Warehouse in the receiving, unloading, checking, unpacking, marking, storing, repacking, wrapping, distributing, and shipping of goods to Goldblatt State Street Store customers.

34. Goldblatt employees at the Wabash Warehouse daily receive, unload, check, and deposit incoming goods on the receiving and shipping platform, 22 per cent of which is received in interstate commerce from points without the State of Illinois. Thereafter the goods are moved by Goldblatt employees either to marking rooms or warehousing space in the warehouse. Mail orders, most of which are
received from customers outside the State of Illinois,
206 are filled in the following manner: Goods are selected,
wrapped, and labeled in the State Street Store, delivered to the shipping room in the Wabash Warehouse for checking and affixing of postage, conveyed to the loading and shipping platform for loading onto a Goldblatt truck or trailer, and taken to the United States Post Office. Express shipments, made at the request of the customer, are handled in approximately the same manner as the mail orders, except that the express company's truck calls for the shipments. In handling outgoing goods sold at the State Street Store the package is wrapped and a delivery slip prepared, which is attached thereto. The package is then delivered to the Wabash Warehouse shipping room for checking and conveying to the loading and shipping platform, where it is loaded onto a Goldblatt truck and trailer, and taken to the Ashland Garage for sorting for delivery to Goldblatt customers. At least one trailer a day leaves the Ashland Garage for Indiana.

35. The defendant employs a day guard at the Wabash Warehouse, who is stationed at the receiving and shipping platform and in the alley between Jackson Boulevard and Van Buren Street. His duty is to guard against theft or any other damage to goods and vehicles, either being received at or shipped from the Wabash Warehouse. This day guard keeps the alley clear of traffic; directs incoming trucks and trailers, carrying both local and interstate goods, through the alley and into the truck pit; and also directs all outgoing trucks and trailers from the truck pit
out of the alley. He examines the seals on all incoming
207 Goldblatt trailers. In the case of so-called "valuable"
goods, such as, furs, jewelry, hosiery, etc., received at

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the Wabash Warehouse, the day guard watches the unloading of such goods, and makes certain that the goods are received intact by the particular Goldblatt employee designated to receive said "valuable" merchandise. He also guards the incoming goods throughout the receiving, unloading, and checking process at the receiving platform. No trailer or truck is permitted to depart until the seals have been placed on the vehicles; it is the duty of the day guard to note the numbers of the trailers and authorize the departure of the trailers. The day guard also checks to see that all goods being shipped out of the warehouse are accompanied by either a trip sheet or door pass signed by an authorized Goldblatt employee; this includes express and parcel post shipments which are made daily in both intrastate and interstate commerce. He is also charged with the duty of preventing unauthorized persons from entering the Wabash Warehouse through the receiving or shipping platform.

36. Defendant employs approximately 10 employees in its central office at 343 South Dearborn Street, Chicago, Illinois. These employees perform the administrative work integrating defendant's furnishing of night watchman, guard, detective, fire inspection, and shopping service to Goldblatt. These central office employees hire, assign, and direct the work of all night watchmen, day guards, and detectives employed by defendant in all Goldblatt warehouses and stores, and maintain all the books and records in connection with defendant's business.

208 37. The bookkeeper employed by defendant at defendant's central office handles every phase of defendant's pay roll record for its employees at each Goldblatt warehouse and store, including the Hammond and Gary, Indiana, Goldblatt stores. She prepares and submits weekly to Goldblatt detailed cash disbursement reports, billing Goldblatt for the total detective, day guard, and night watchmen pay roll, plus 3.6 per cent of the gross for Social Security and Unemployment Compensation contributions. She makes the Social Security, Unemployment Compensation, and Withholding Tax returns and pays them to the State of Illinois, the State of Indiana, and the Collector of Internal Revenue. Each week she receives from all Goldblatt stores the records of hours worked daily for all of defendant's employees, and each week she makes up the pay checks and normally mails them to the Gold-

blatt establishment where defendant's employees are stationed, including the Hammond and Gary, Indiana, Goldblatt stores. The bookkeeper maintains individual earnings records for all defendant's employees. In addition to the foregoing duties, the bookkeeper has since April 1, 1951, four days per week, performed the duties of the switchboard operator, as described in finding 39 hereof.

38. The statement clerk employed in defendant's central office is engaged in receiving, recording, and transmitting information with respect to arrests made by defendant's detectives and day guards stationed in all Goldblatt stores and warehouses. Defendant's detectives and guards, upon arresting a shoplifter or dishonest em-
ployee, record information regarding the theft, the
209 circumstances surrounding it, and the person in-
volved, on forms provided for that purpose, and telephone this information to the statement clerk, who examines defendant's records and gives any information found therein concerning the person arrested to the detective or guard by telephone. The detective or guard then sends various records he has made in connection with such arrests to the statement clerk, who records such information on cards for defendant's files and acknowledges receipt of the documents from the detective or guard. She also prepares a do-not-hire card, if the arrest involves a Goldblatt employee, and delivers such cards almost daily to Goldblatt's State Street Store, from which point the information contained thereon is made available to all Goldblatt stores. Each month the statement clerk prepares and submits a statement to Goldblatt's showing the arresting detective or day guard, persons arrested, goods taken, and goods returned. In addition to the foregoing duties, the statement clerk has, since April 1, 1951, one day per week, performed the duties of the switchboard operator described in finding 39 hereof.

39. Until April 1, 1951 defendant employed a switchboard operator in the central office. Her duties since April 1, 1951 have been performed by the bookkeeper and statement clerk, as set forth in findings 37 and 38 hereof. The switchboard operator's duties are to handle all incoming and outgoing calls through the switchboard in defendant's central office, including all calls between defendant's
central office and defendant's employees stationed in
210 all Goldblatt warehouses and stores. Calls to and
from Goldblatt's Indiana stores occur daily. Tele-

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phone calls are received and made by the switchboard operator to arrange for the late arrival of a trailer at a Goldblatt establishment. Defendant's employee stationed at the trailer's point of departure telephones the switchboard operator to notify her that a trailer left too late to arrive before closing time at the Goldblatt establishment, which is its destination; she then telephones the defendant's employee at the destination and notifies him of the trailer's late arrival. She also receives and makes telephone calls to arrange for late opening of the door at a Goldblatt establishment. A Goldblatt executive notifies her by telephone that it is necessary for a person to remain in or enter a Goldblatt establishment after closing hours; she then telephones this information to defendant's employee at the establishment involved, and records information regarding the late opening in a book kept at the switchboard. She also receives information by telephone from defendant's detectives regarding the cashing of a bad check in a Goldblatt store, and she in turn telephones such information to defendant's detectives in all Goldblatt's stores, including the Indiana stores. Employees in defendant's central office also make calls to and receive calls from points in States other than Illinois and Indiana, depending on the circumstances of the business.

40. Defendant's fire inspector works out of the central office. He inspects all Goldblatt stores and warehouses to insure compliance with the rules and regulations of insurance association underwriters to prevent cancellation of insurance and to obtain compliance with the city fire ordinances. He inspects the Indiana stores biweekly; 211 the warehouses, weekly. He inspects fire extinguishers to see that they are properly loaded at all times. He supervises two fire drills a year at each Goldblatt establishment. He makes daily reports to the office manager. He is subject to call at all times. From October 1, 1947 to about July 1, 1951 defendant employed a fire inspector who devoted full time to fire inspection duties. Since December 27, 1951 Bernard C. Poehler has performed the duties of the fire inspector as well as supervised the watchmen. He spends between 30 and 35 per cent of his working time in performing fire inspection duties. He is on call for fire inspection duties 24 hours a day.

41. Goldblatt carries insurance on the building and contents of the Wentworth Warehouse, the Ashland Ware-

house and Garage, and the 63rd Street Warehouse, as follows:

	Fire and Extended Coverage Insurance on Building	Fire and Extended Coverage Insurance on Contents of Building	Sprinkler Leakage Ins. on Building	Sprinkler Leakage Ins. on Contents of Building	Internal and External Hold-up Insurance
Wentworth Warehouse	$ 929,000	$3,000,000	Included in fire and extended coverage policies		$ 6,000—Int. 1,000—Ext.
Ashland Warehouse and Garage	1,910,000	1,750,000	"	"	50,000—Int. 1,500—Ext.
63rd Street Warehouse*	245,000	900,000	None	None	25,000—Int. 1,000—Ext.

* In addition, at the 63rd Street Warehouse there is open stock burglary insurance in the amount of $50,000 covering only the liquor stored in the vault.

It is the practice of fire insurance companies to graduate the rate charged for fire insurance in accordance with the degree of risk presented. As a general rule, the plant which maintains a night watchman making hourly
212 rounds is accorded a lower insurance rate than an identical plant which maintains no such watchman. The maintenance of night watchmen making hourly rounds of key stations in the Wentworth Warehouse, the Ashland Warehouse and Garage, and the 63rd Street Warehouse has resulted in Goldblatt obtaining a lower insurance rate than would have been possible without the aforesaid night watchmen. At the Wentworth Warehouse the premium savings approximate 5 per cent, or $46.45, on the building, and 4 per cent, or $150.00, on the contents of the building. At the 63rd Street Warehouse the premium savings approximate 5 per cent, or $15.60 on the building, and 3 per cent, or $270.00, on the contents thereof. At the Ashland Warehouse and Garage the premium savings approximate 2 per cent, or $19.10, on the building, and 1 per cent, or $17.50, on the contents thereof. There are a number of other factors which affect Goldblatt's fire insurance premiums, including the location of buildings, the construction of buildings, the presence or absence of a sprinkler system, and the kind of merchandise offered.

Goldblatt carries insurance on the transportation of goods by its motor fleet consisting of 127 trucks and 70 trailers drawn by 17 tractors. The ability to obtain this

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insurance is affected by the security measures used by defendant's employees and Goldblatt employees. This is true with regard to the practice of sealing Goldblatt vehicles and keeping records of the seals, as described herein.

42. Since October 1, 1947 the defendant has failed to pay its watchmen, guards, and detectives employed at the Wentworth Warehouse, Ashland Warehouse and Garage, 63rd Street Warehouse, and Wabash Warehouse, as well as the statement clerk, bookkeeper, switchboard operator, and fire inspector employed at its central office, overtime compensation at the rate prescribed in Section 7 of the Fair Labor Standards Act of 1938, as charged in paragraph XI of the complaint.

213 Conclusions of Law.

1. The Court has jurisdiction of the parties and the subject matter of this cause of action pursuant to the provisions of the Fair Labor Standards Act of 1938, as amended (Act of June 25, 1938, c. 676, 52 Stat. 1060; U. S. C. ti. 29, sec. 201 et seq., as amended, 63 Stat. 910), hereinafter called the Act.

2. The plaintiff herein, Martin P. Durkin, is the Secretary of Labor, United States Department of Labor. As a result of Reorganization Plan No. 6, dated March 13, 1950, effective May 24, 1950, issued under the Reorganization Act of 1949, Title 5 U. S. C., Section 133(z) et seq., the functions of the Administrator of the Wage and Hour Division under the Fair Labor Standards Act of 1938, as amended, have been transferred to the Secretary of Labor.

3. The defendant's watchmen, guards, and detectives employed at the Wentworth Warehouse, Ashland Warehouse and Garage, 63rd Street Warehouse, and Wabash Warehouse, as well as defendant's statement clerk, bookkeeper, switchboard operator, and fire inspector employed at its central office, are engaged in commerce and in the production of goods for commerce within the meaning of Sections 3(j) and 7 of the Act, as amended.

4. The exemption provided by Section 13(a)(1) of the Act with respect to any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman is inapplicable to defendant's watchmen, guards, and detectives employed at the Wentworth Warehouse, Ashland Ware-

house and Garage, 63rd Street Warehouse, and Wabash Warehouse, as well as defendant's statement clerk, bookkeeper, switchboard operator, and fire inspector employed at its central office.

214 5. The exemption provided by Section 13(a)(2) of the Act with respect to any employee employed by any retail or service establishment is inapplicable to defendant's watchmen, guards, and detectives employed at the Wentworth Warehouse, Ashland Warehouse and Garage, 63rd Street Warehouse, and Wabash Warehouse, and defendant's statement clerk, bookkeeper, switchboard operator, and fire inspector employed at its central office.

6. The defendant's employee Bernard C. Poehler, described in Finding No. 40, is engaged in commerce and in the production of goods for commerce within the meaning of Sections 3(j) and 7 of the Act, as amended.

7. The exemption provided by Section 13(a)(1) of the Act with respect to any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman is inapplicable to defendant's employee Bernard C. Poehler, described in Finding No. 40, who is supervisor of the watchmen, but who devotes between 30 and 35 per cent of his working time in performing fire inspection duties, and is on call for fire inspection 24 hours per day.

8. The exemption provided by Section 13(a)(2) of the Act with respect to any employee employed by any retail or service establishment is inapplicable to defendant's employee Bernard C. Poehler, described in Finding No. 40.

9. The defendant has violated Sections 7 and 15(a)(2) of the Act, as amended, and, pursuant to Section 17 of the Act, plaintiff is entitled to an order restraining the defendant from violating Section 15(a)(2) of the Act, with costs to be taxed by the Clerk of the Court.

215 10. The Court has no jurisdiction under Section 17 of the Act to order defendant to make reparation to its employees in the amounts due to them by reason of the violations of the Act.

Let judgment be entered in accordance with the Findings of Fact and Conclusions of Law.

Dated: May 7, 1953.

J. S. Perry,
United States District Judge.

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216 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

JUDGMENT.

Plaintiff having filed his complaint, and the defendant having appeared by counsel and having filed its answer to said complaint, and the Court having considered the evidence and the briefs of the respective parties, and having made and entered appropriate Findings of Fact and Conclusions of Law, and sufficient reasons therefor appearing.

Now, therefore, upon motion of the attorneys for plaintiff, it is

Ordered, Adjudged, and Decreed that defendants, its officers, agents, servants, employees, attorneys, and all persons acting or claiming to act in its behalf and interest, be, and they hereby are, permanently enjoined and restrained from violating the provisions of Section 15(a)(2) of the Fair Labor Standards Act of 1938, as amended (Act of June 25, 1938, c. 676, 52 Stat. 1060; U.S.C. ti. 29, sec. 201 *et seq.*, as amended, 63 Stat. 910), hereinafter referred
217 to as the Act, in the following manner:

The defendant shall not, contrary to Section 7 of the Act, employ any of its employees engaged in commerce or in the production of goods for commerce, as defined by the Act for a workweek longer than 40 hours, unless the employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed.

It is Further Ordered, Adjudged, and Decreed that the plaintiff recover of and from the defendant his costs and disbursements herein.

Dated: May 7, 1953.

J. Sam Perry,
United States District Judge.

218 And afterwards on, to wit, the 1st day of July, 1953 came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal and Bond for Costs on Appeal in words and figures following, to wit:

219 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Martin P. Durkin, Secretary of Labor,
Plaintiff,
vs.
Joyce Agency, Inc., a corporation,
Defendant.
Civil Action
No. 49 C 1558.

NOTICE OF APPEAL.

Notice is hereby given that Joyce Agency, Inc., a corporation, defendant above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the final judgment enjoining the defendant, its officers, agents, servants, employees, attorneys, and all persons acting or claiming to act in its behalf and interest, from violating the provisions of Section 15(a)(2) of the Fair Labor Standards Act of 1938, as amended, said judgment having been entered in this action on May 7, 1953.

Stanford Clinton,
Attorney for Appellant,
134 North LaSalle Street,
Chicago, Illinois,
Robert A. Sprecher,
Attorney for Appellant,
100 West Monroe Street,
Chicago, Illinois.

Dated: July 1, 1953.

(Certificate of Mailing Attached Hereto):

220 United States of America,
Northern District of Illinois. } ss:

* * (Caption—49-C-1558) * *

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on July 1, 1953, in accordance with Rule 73(b) of

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the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to: William S. Tyson, Herman Grant and George Faris, 105 West Adams Street, Chicago 3, Illinois.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court, at Chicago, Illinois, this 1st day of July, 1953.

Roy H. Johnson,
Clerk.

(Seal)

By Gizella Butcher,
Deputy Clerk.

221 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—49-C-1558) * *

BOND FOR COSTS ON APPEAL.

Know All Men By These Presents That we, Joyce Agency, Inc., a corporation, as principal, and The Travelers Indemnity Company as surety, are held and firmly bound unto Martin P. Durkin, Secretary of Labor, the plaintiff, in the sum of Two Hundred Fifty Dollars ($250.00), to be paid to the said Martin P. Durkin, his successors and assigns, to which payment we bind ourselves, our successors and assigns, jointly and severally.

The condition of this bond is that, whereas the defendant has appealed to the Court of Appeals for the Seventh Circuit by notice of appeal filed July 1, 1953, from the judgment of this court entered May 7, 1953, if the defendant shall pay all costs adjudged against him if the appeal is dismissed or the judgment affirmed, or such costs as the Court of Appeals may award if the judgment is modified, then the above obligation to be void, otherwise to remain in full force and effect.

Joyce Agency, Inc.,
By Robert Gerlich,
President,

The Travelers Indemnity Company, (Seal)
By William Davies,
Attorney-in-Fact.

Attest:
G. Holter,
(Seal) *Secretary.*

222 State of Illinois, } ss:
County of Cook. }

I, Robert A. Sprecher, a Notary Public in and for said County, in the State aforesaid, Do Hereby Certify that Robert Gerlich, personally known to me to be the President of Joyce Agency, Inc., and G. Holter, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument as President and Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority, given by the Board of Directors of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal this ..... day of July, 1953.

Robert A. Sprecher,
(Seal) *Notary Public.*

State of Illinois, } ss:
County of Cook. }

I, ..., a Notary Public in and for said County, in the State aforesaid, Do Hereby Certify that ....., personally known to me to be the ..... of the .....
223 appeared before me this day in person and acknowledged that as such ..... he signed and delivered the said instrument, pursuant to authority given him by said ....., as his free and voluntary act and as the free and voluntary act and deed of said ....., for the uses and purposes therein set forth.

Given under my hand and notarial seal this ..... day of ....., 1953.

.....
Notary Public.

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State of Illinois, } ss:
County of Cook. }

On this 1 day of July, 1953, before me personally came William Davies to me known, who being by me duly sworn, did depose and say: that he is Attorney(s)-in-Fact of The Travelers Indemnity Company, the Corporation described in and which executed the foregoing instrument; that he know(s) the seal of said Corporation; that the seal affixed to said instrument is such corporate seal; that it wa so affixed by authority granted to him in accordance with the By-Laws of the said Corporation, and that he signed his name thereto by like authority.

(Seal) LaVerne J. Milleville,,
(Seal) *Notary Public.*

My commission expires 9-24-55.

• • • • •

237 United States of America, }
Northern District of Illinois, } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled: Martin P. Durkin, Secretary of Labor, Plaintiff, *vs.* Joyce Agency, Inc., a corporation, Defendant, No. 49-C-1558, as the same appear from the original records and files theerof now remaining among the records of the said Court in my office, except the Original Stipulation Of Facts and Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14-A, 14-B, 14-C, 14-D, 14-E, 14-F, 14-G, 14-H, and 15, filed November 13, 1951, which are incorporated herein by direction of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 22nd day of July, 1953.

Roy H. Johnson,
Clerk.

(Seal)

By Gizella Butcher,
Deputy Clerk.

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At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the sixth day of October, in the year of our Lord one thousand nine hundred and fifty-three, and of our Independence the one hundred and seventy-eighth.

No. 10936

JAMES P. MITCHELL, SECRETARY OF LABOR, PLAINTIFF-APPELLEE,

vs.

JOYCE AGENCY, INC., DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

And afterwards, to-wit: On the twenty-ninth day of March, 1954, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1953, JANUARY SESSION, 1954

No. 10936

JAMES P. MITCHELL, SECRETARY OF LABOR, PLAINTIFF-APPELLEE,

vs.

JOYCE AGENCY, INC., A CORPORATION, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

March 29, 1954

Before MAJOR, *Chief Judge*, SWAIM and SCHNACKENBERG, *Circuit Judges*

SCHNACKENBERG, *Circuit Judge*. This is an appeal by the defendant, Joyce Agency, Inc., from a judgment entered on May 7, 1953, by the United States District Court for the Northern District of Illinois, Eastern Division, finding that the defendant has violated sections 7 and 15(a) (2) of the Fair Labor Standards Act of 1938, as amended (Act of June 25, 1938, c. 676, 52 Stat. 1060; 29 U. S. C. §§ 201, *et seq.*, as amended, 63 Stat. 910), and ordering, pursuant to section 17, that the defendant be enjoined from further violating the provisions of section 15(a) (2) of the Act.

The question for decision is whether defendant's employees were engaged in interstate commerce or in the production of goods for

interstate commerce at four warehouses of Goldblatt Bros., and at defendant's central office, so as to bring them within the coverage of the act.

From the parties' stipulation of facts the following situation appears to have existed at all times hereinafter mentioned.

Defendant is an Illinois corporation with its central office at 343 South Dearborn Street, Chicago. It engages in the business of furnishing watchman, guard, detective, fire inspection and shopping service to Goldblatt Bros. Inc., hereinafter called "Goldblatt", and employs 72 persons.

Goldblatt owns and operates a chain of 14 retail department stores. Of these stores, 10 are in the city of Chicago and one in each of the cities of Joliet, Illinois, Hammond, Gary, and South Bend, Indiana. It has a central office in Chicago, Illinois, where the administrative work in connection with Goldblatt's organization is performed, including the purchase of various kinds of merchandise usually found in a large department store. To service its 14 department stores, Goldblatt maintains in Chicago, Illinois, warehouses at 3913 South Wentworth Avenue, 3161 South Ashland Avenue, 201 East 63rd Street, and 328 South Wabash Avenue. At these warehouses goods are received and stored and thereafter shipped to the defendant's various retail stores. Most of the goods received are from points outside Illinois and a substantial part of the goods shipped to retail stores is to those located in Indiana. At one of the warehouses, which is known as the Ashland warehouse, there are also a furniture renovating shop, a radio and television clinic, a carpet and linoleum department, and a sewing machine department, as well as a garage where nine persons are employed by Goldblatt in maintaining its motor transportation fleet.

Defendant's employees include guards and watchmen who guard the warehouses and their contents against all risks, including fire, and the loading and unloading of goods on the loading platforms of the warehouses, check all packages being carried out, keep records of the names of people working after closing hours for the use of the watchmen, open railroad doors to receive freight cars during the night, control ingress and egress of trucks in and out of the garage, and about 5 A. M. check out a truck carrying advertising material to the Indiana stores. Certain guards check the locks and seals on trucks before permitting them to unload or to leave the warehouses when loaded. Guards performing this particular service will be hereinafter referred to as the "seal-checking guards". Defendant's employees do not physically handle the goods received or shipped, except insofar as they may handle stolen goods recovered by them, valued at approximately $300.00 per year.

The furniture renovating shop reconditions, upholsters, repairs, replaces broken parts, assembles, refinishes and polishes furniture which has been damaged while on display in the stores or in transit.

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The clinic removes television and radio sets from their cases, repairs new, display and customers' sets. The carpet and linoleum department cuts carpets and linoleums to size, edges and binds carpeting and prepares carpets and linoleum for laying. The sewing machine shop unpacks sewing machines and their accessories and cabinets, whereupon it attaches the accessories to the machines and the latter are tested and then installed in cabinets or portable cases.

Defendant has two watchmen at Goldblatt's Lexington bakery and the parties agree that their activities constitute production of goods for commerce and hence they are covered by the act.

Defendant employs about ten persons in its central office. They perform administrative work in connection with defendant's furnishing watchman, guard, detective, fire inspection and shopping service to Goldblatt. They hire, assign and direct the work of all employees employed by defendant in Goldblatt's warehouses and stores. At the central office employees maintain all the books and records in connection with defendant's business. Defendant's payroll is kept there and from there weekly bills are sent to Goldblatt for the payroll plus social security and unemployment compensation contributions, the latter of which is sent by defendant to the State of Illinois or the State of Indiana and the United States Collector of Internal Revenue. At the central office, as a part of her duties, one employee communicates with the various employees of defendant stationed in the Goldblatt warehouses and stores and advises them when a truck will arrive at a warehouse after closing time. When a bad check is cashed in a Goldblatt store, that fact is telephoned to this woman, who, in turn, telephones the same information to defendant's detectives in all Goldblatt stores. There is a direct telephone line from the central office to all Goldblatt stores and warehouses.

Counsel for both parties have in their briefs treated the Fair Labor Standards Act of 1938, as subsequently amended, including the 1949 amendment to section 3 thereof (29 U. S. C. § 203) as governing this case.

Under the plain language of the act we are convinced that plaintiff was required to show that Goldblatt was engaged in the production of goods for interstate commerce and that defendant's employees now under consideration were engaged in occupations directly essential to such production or that they were employees engaged in interstate commerce. *Engebretsen* v. *Albrecht Co.*, 150 F. 2d 602, at 604.

Plaintiff contends that the Goldblatt warehouse employees are engaged in "handling" and "working on" goods intended for interstate shipment, which, under the definition of "produced" in section 3(j) and the decisions of this court and of the United States Supreme Court, constitutes "production of goods for commerce", and that the employees of defendant, which furnishes the guard,

watchman, detective, and fire inspection service for these warehouses, are engaged in a "closely related" process or occupation "directly essential" to such production within the meaning of section 3(j) and are, therefore, engaged in producing goods for commerce.

Section 3(j), as amended, reads as follows:

> "(j) 'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State."

As to the work done in the furniture renovation shop, television and radio clinic, carpet and linoleum and sewing machine shops, there is no production. Such work constitutes the rendering of services upon articles already produced. Insofar as these activities pertain to goods theretofore sold to Goldblatt's customers, they fall within the exemption of a retail servicing occupation in accordance with the Regulations issued by the Wage and Hour Division of the Department of Labor, which provide in Section 779.14(c) in part as follows:

> "Work performed on the customer's own goods where the completed job will not result in the creation of a different product from that which the customer brought in will be considered as 'services' for purposes of the exemption, and, if recognized in the particular industry as retail services, will be considered as such in determining the applicability of section 13(a) (2). For example, the recapping of a tire for a customer, the reupholstering of a chair for a customer, the repairing of an automobile for a customer regardless of the degree of repairs, the rebuilding of a pair of shoes for a customer, the rebuilding of a typewriter for a customer, will be regarded as the performance of services for purposes of the application of Section 13(a) (2) exemption to retail or service establishments and employees employed by them."

As to those activities relating to Goldblatt's own goods, the work done in the clinic and shops does not create a different product, and hence does not constitute production.

From a consideration of the processes occurring in the warehouses it is inescapable that there is physical touching by Goldblatt's employees of the goods in the warehouses which are intended for movement in interstate commerce. Plaintiff contends also that

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these goods are "worked on" by Goldblatt employees in the warehouses. The words "handled" or "worked on" include every kind of incidental operation preparatory to putting goods into the stream of commerce. But there is a distinction between handling in transportation, on the one hand, and producing, on the other hand, which is put to naught by a contention such as plaintiff's that by definition everyone who handles goods is thereby made a producer. As was said in *Western Union* v. *Lenroot*, 323 U. S. 490, at 504:

> "One would not readily impute such an absurdity to Congress; nor can we assume, contrary to the statute, that 'produced' means one thing in one section and something else in another. To construe those words to mean that handling in carriage or transmission in commerce makes one a producer makes one of these results inevitable. Congress, we think, did not intend to obliterate all distinction between production and transportation."

In the warehouses, Goldblatt's employees receive, store, in some cases split up large packages of goods into smaller ones, and re-ship. These are not acts of production. They do nothing to affect the character of the articles themselves. Such handling is not production. There is no "working on" the goods by these employees. It will be noted, therefore, as a matter of fact that in the case at bar the employees of Goldblatt do not produce any goods in these warehouses. There being no production in the warehouses by Goldblatt employees, it cannot be said that any duties of defendant's employees on said premises are performed in any process or occupation related or essential to the production of goods, within the meaning of section 3(j).

In *Engebretsen* v. *Albrecht Co.*, *supra*, relied upon by plaintiff, this court concluded that a janitor and watchman performed a service essential to an operation which the court found to be the production of goods for commerce, and, therefore, held that that employee was covered by the act. That case is not controlling here where we find there was no production of goods for commerce carried on in the Goldblatt warehouses.

Plaintiff also contends that the receiving, handling, and shipping of goods interstate at the Goldblatt warehouses constitutes engagement "in commerce" and that the guards, watchmen, detectives and fire inspectors, who are employed by the defendant to furnish a highly integrated fire and theft protection service at such warehouses, who control the departure of interstate shipments and who protect the actual transportation of the goods, are "engaged in commerce".

The real test as to defendant's employees is whether they (the employees themselves) are engaged in an interstate commerce

activity. *Kirschbaum Co.* v. *Walling*, 316 U. S. 517. We must look to the employee's activity rather than the employer's activity, so far as "engaged in commerce" determines liability. *Engebretsen* v. *Albrecht Co., supra*, at page 605. At the outset of this part of the discussion, it is to be noted that the seal-checking guards examine the seals on trucks before incoming trucks are unloaded and after outgoing trucks are loaded and sealed. Until incoming trucks are actually unloaded and the contents deposited on the warehouse platform they are in interstate commerce, and after outgoing trucks are loaded and sealed they are also in interstate commerce. The seal-checking guards in performing their function of checking these seals in the interest of security of the contents of the trucks are engaged in interstate commerce and are, therefore, subject to the act. *Walling* v. *Goldblatt Bros., Inc.*, 128 F. 2d 778, at 782.

Defendant admits in its brief that some of the Goldblatt warehouse employees are involved in interstate commerce (appellant's brief, 50). The facts in this case show, however, that none of the employees of defendant working at the warehouses, except the seal-checking guards, is himself engaged in commerce.

It will be noted that section 7(a) of the act (29 U. S. C. § 207(a)) provides:

> "(a) Except as otherwise provided in this section, no employer shall employ any of his employees who is engaged in commerce * * * for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

In *Carrigan* v. *Provident Trust Co. of Philadelphia*, 153 F. 2d 2d 74, the court, in considering whether a bank guard was subject to the act, said, beginning at page 74:

> "In § 3(j), 29 U.S.C.A. § 203 (j), 'production' is broadly defined * * *. 'Commerce' on the other hand, is narrowly limited in § 3(b), 29 U. S. C. A. § 203(b) * * *
>
> An important distinction between the two definitions is evident. Congress described 'production' to include acts merely necessary to the production of goods. 'Commerce', on the other hand, is so closely circumscribed that acts merely necessary to commerce are not included. The wide variation in the scope of the two terms has been frequently noted."

The court cited *McLeod* v. *Threlkeld*, 319 U. S. 491, saying that there, at 497, it was declared:

> "That 'The test under this present act, to determine whether an employee is engaged in commerce, is not whether the employee's

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activities affect or indirectly relate to interstate commerce but whether they are actually in or so closely related to the movement of the commerce as to be a part of it. Employee activities outside of this movement, so far as they are covered by wage-hour regulation, are governed by the other phrase, 'production of goods for commerce.'

* * * * * * *

Only one question is involved here, namely, is appellant 'engaged in commerce' within the meaning of the Fair Labor Standards Act.

This court held in *Blumenthal* v. *Girard Trust Co.*, 3 Cir. 1944, 141 F. 2d 849, that a caretaker or janitor of a building, containing at least one tenant engaged in interstate commerce, was not an employee within the terms of the Act. * * *

As the courts have consistently maintained, it is the work of the employee and not the nature of his employer's business that determines the applicability of the Act. * * * That the employer's entire business is not interstate in character is unimportant so long as a substantial part of the employee's work relates to the interstate movement of goods. *Walling* v. *Jacksonville Paper Co.*, 1943, 317 U. S. 564, 572, 63 S. Ct. 332, 87 L. Ed. 460. That a building is wholly occupied by an employer, whose business is partly interstate in character, or only partially occupied by such an employer, is immaterial with respect to the status under the Act of a building guard. It would seem that the instant case cannot be distinguished in character of fact from its predecessors in this court unless appellant's duties of guarding appellee's bank building are 'so closely related to the move of the commerce as to be a part of it.' * * *

But for a rather remote possibility that the law would be violated by a person or persons violently and forcefully breaking into the bank premises with the intent of robbery, or that some emergency should arise as a fire or leaky pipe, the watchman's services could have no effect upon commerce, and even then the effect of the watchman's acts would be negative and not acts in commerce. He had no hand whatever in the affirmative acts which constitute commerce."

There is nothing stated in *Carrigan* v. *Provident Trust Co.*, *supra*, which is inconsistent with the holding in *Walling* v. *Goldblatt Bros., Inc.*, 128 F. 2d 778.

Accordingly, we hold that none of the defendant's employees in the warehouses, with the exception of the seal-checking guards, is covered by the act.

As to the employees in defendant's central office, it appears that there is one employee who gives a substantial part of her time to making and receiving telephone calls to and from defendant's guards at the Goldblatt warehouses and stores, some of the latter being in the State of Indiana. It will be noted that these telephone calls are from and to persons entirely in the service of defendant. When employees talk to each other in performing their duties for their employer, they are not engaged in commerce as that word is used in the act now under consideration. That is true whether they sit at adjoining desks or are at the opposite ends of a telephone wire and regardless of whether that wire crosses state lines. This is still true even though another, who owns the wire, may be engaged in commerce in the transmitting of the sound of human voices over that wire. Section 3 of the act (29 U. S. C. § 203) declares that "commerce means trade, commerce, transportation, transmission, or communication" interstate. As was said in *Fleming* v. *Jacksonville Paper Co.*, 128 F. 2d 395, at 398:

> "Transportation is only a part of it. Trade is another part, and according to the old maxim, it takes two to make a trade. Importer as well as exporter, buyer as well as seller, is a participant; and ordering and paying for goods are included."

If it takes two to make a trade, these two must be the employer and another person or firm with which he is dealing. Communication means from one person to another; that is from the employer to some other person or firm. It cannot reasonably be said to mean a communication by one of the employees of an employer to another employee of the same employer. In the case at bar, the person doing the telephoning to points in another state did not call anyone outside of the defendant's own staff of employees. There was no communication within the definition of commerce contained in the act. Neither by the statutory definition nor as commonly understood does "commerce" include communication by word of mouth between the servants of a common employer in the course of the latter's business. Telephoning by an employee to persons not in the employer's organization, on behalf of his employer, for the benefit of a third party with whom the employer has a contract for such service, would be an act in commerce. But that is not the factual situation which confronts us. It follows that the telephoning done by the employee in question does not bring her under the act.

This conclusion is strengthened by the fact that this particular employee is not engaged in selling and delivering across state lines or at buying and receiving across state lines, and hence would not fall within the category referred to in *Fleming* v. *Jacksonville Paper Co.*, *supra*, at page 398, where the court said:

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"Those who work either at selling or delivering across State lines, or at buying and receiving across State lines, are employed in commerce, whether they write the letters, keep the books, or load and unload or drive the trucks."

There are other employees in the central office of defendant. Their duties include the supervision of the various guards and watchmen stationed by defendant in the Goldblatt warehouses and stores, as well as the keeping of payroll records and the making of payments to said employees of salaries, less tax deductions. Inasmuch as the only employees in this group serviced by the central office who are engaged in interstate commerce are the seal-checking guards, of whom there are only three, and two watchmen at the Lexington bakery, which is engaged in production, and since the record is silent as to the amount of time actually expended by the employees in the central office in connection with these five employees, the plaintiff has not established that in connection therewith central office employees are devoting a substantial part of their time to these five employees (*Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, at 572) and hence this court cannot say that the said central office employees are covered by the act. In all other respects it is clear on this record that none of the central office employees of defendant is subject to the act.

Conclusion

For the reasons above stated, we conclude that as to the seal-checking guards the decree of the court below is affirmed and in all other respects it is reversed.

Affirmed in Part; Reversed in Part.

A true Copy:
Teste:

____ ____,
Clerk of the United States Court of Appeals for the Seventh Circuit.

And on the same day, to-wit: On the twenty-ninth day of March, 1954, the following further proceedings were had and entered of record, to-wit:

Monday, March 29, 1954

Before Hon. J. Earl Major, *Chief Judge;* Hon. H. Nathan Swaim, *Circuit Judge;* Hon. Elmer J. Schnackenberg, *Circuit Judge*

No. 10936

James P. Mitchell, Secretary of Labor, plaintiff-appellee,

vs.

Joyce Agency, Inc., defendant-appellant

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by Counsel.

On consideration whereof: It is ordered and adjudged by this Court that the Judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed as to the seal-checking guards, and that the said Judgment in all other respects be, and the same is hereby, Reversed.

And afterwards, to-wit: On the thirteenth day of April, 1954, there was filed in the office of the Clerk of this Court, a Petition for Rehearing, which said Petition is not copied here.

And afterwards, to-wit: On the twenty-second day of April, 1954, there was filed in the office of the Clerk of this Court, an Answer to Petition for Rehearing, which said Answer is not copied here.

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And afterwards, to-wit: On the twenty-third day of April, 1954, the following further proceedings were had and entered of record, to-wit:

Friday, April 23, 1954

Before Hon. J. EARL MAJOR, *Chief Judge;* Hon. H. NATHAN SWAIM, *Circuit Judge;* Hon. ELMER J. SCHNACKENBERG, *Circuit Judge*

No. 10936

JAMES P. MITCHELL, SECRETARY OF LABOR, PLAINTIFF-APPELLEE,

vs.

JOYCE AGENCY, INC., DEFENDANT-APPELLANT

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the Petition for a Rehearing of this cause be, and the same is hereby, DENIED.

And afterwards, to-wit: On the fourth day of May, 1954, the Mandate of this Court issued to the United States District Court for the Northern District of Illinois, Eastern Division.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, Chicago 10, Illinois

I, KENNETH J. CARRICK, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the Opinion of the Court, the Judgment, reference to filing Petition for Rehearing and Answer, Order denying Petition for Rehearing, and Reference to Issuance of Mandate, in

Cause No. 10936

JAMES P. MITCHELL, SECRETARY OF LABOR, PLAINTIFF-APPELLEE,

vs.

JOYCE AGENCY, INC., DEFENDANT-APPELLANT

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

IN TESTIMONY WHEREOF I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 21st., day of June A. D. 1954.

[SEAL.]

(S.) KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit.

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Supreme Court of the United States

No. 230, October Term, 1954

JAMES P. MITCHELL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

JOYCE AGENCY, INC.

Order allowing certiorari

Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.